

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 11,444
JOINT APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HYMAN MINKOFF, *Appellant*,

v.

ALAN W. PAYNE, ET AL., *Appellees*.

**Appeal from the United States District Court
for the District of Columbia**

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED OCT 15 1952

Joseph W. Stewart
CLERK

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,444

HYMAN MINKOFF, *Appellant*,

vs.

ALAN W. PAYNE, ET AL., personally and as members of the
Alcoholic Beverage Control Board, *Appellees*.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

53 | Filed Feb 1 1951 Harry M. Hull, Clerk

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HYMAN MINKOFF,
1400 North Capitol Street,
Washington, D. C.,

Plaintiff,

vs.

ALAN W. PAYNE,
AGNES K. MASON,
JAMES O'D. MORAN,

personally and as Members of the
Alcoholic Beverage Control Board,
300 Indiana Avenue, N. W.,
Washington, D. C.,

Defendants.

C. A. No. 435—'51

C o m p l a i n t .

(For mandatory injunction and/or mandamus)

1. The plaintiff, Hyman Minkoff, is a citizen of the United States and a resident of the District of Columbia and brings this suit in his own right; he sues the defendants, Alan W. Payne, Agnes K. Mason and James O'D. Moran, personally and as members of the Alcoholic Beverage Control Board in and for the District of Columbia. Jurisdiction is in this Court, because it involves property rights in excess of \$3,000.00 and the nature of relief prayed for is equitable.

2. Since December 23rd, 1937, this plaintiff has been continuously in possession of a Retailer's License Class "A", issued by and under authority of the aforementioned Board, pursuant to the Act of Congress of January 24, 1934, as Amended (D. C. Code, Secs. 101 et. seq., Title 25). That the said license has been renewed from year to year, the last of such renewals being on February 1, 1950, which said license expires at midnight, January 31, 1951. That at no time during the period aforesaid has the plaintiff been cited before the defendant Board for any violation of the Act or the Regulations promulgated thereunder by the Commissioners of the District of Columbia.

3. That the business of said plaintiff is in the neighborhood of \$600,000.00 per year; that his profit therefrom annually, at present, is approximately \$25,000.00; that he has an investment in merchandise and capital assets
54 is in excess of \$75,000.00, that the good will of his business as a going concern and possess- a Retailer's Class "A" license as a aforesaid is reasonably worth \$100,000.00, and that plaintiff is the owner of the building in which his store is housed, purchase by him at great value.

4. That on, to wit, December 10, 1950, the plaintiff applied for a renewal of his said license in the manner and form prescribed by law; that on the 29th day of December, 1950, the date prescribed by law for any protests to be made against the renewal of said license, the said application of the said plaintiff was formally called by the Board and no protest to the renewal thereof was made.

5. That on the 10th day of January, 1951, the plaintiff received a letter from the said Board, informing him to appear before it on the 23rd day of January, 1951, to show to the satisfaction of the Board that he was a person of good moral character and generally fit for the trust to be in him reposed by the issuance of the said

license. That he did appear before said Board on the 23rd, 24th and 26th of January, 1951, at which time testimony was adduced for and against the plaintiff.

6. The testimony adduced against the plaintiff was purposed to show that during the period from November 1947 thru July 1949 he made certain false and fraudulent entries in his books of record, in violation of Title 26, Sec. 2857 (a) of the Internal Revenue Code. Your plaintiff offered evidence tending to show that a mere book-keeping mistake was made with respect to the entries required to be kept by him and that the evidence presented by the three self-confessed bootleggers to the effect that purchases stated to be made by them on indefinitely stated occasions were not in fact made and for that reason were not contained in the records of wholesale sales, required to be kept by the provisions of the Internal Revenue Code above referred to. In addition thereto, twelve (12) responsible business and professional men of the District of Columbia testified from long acquaintance with and knowledge of the plaintiff that his reputation for being a person of good moral character was "excellent".

55 7. That the presence of the three bootleggers, who admitted that they had been arrested and fined for the unlawful transportation of intoxicating liquors, was by reason of the fact that each received a letter by Registered Mail over the signature of the defendant Payne which stated in substance that they were required by the Summons which was attached thereto to appear before the Board on the stated date for the purpose of giving testimony; two of these letters were directed to and received by two of the witnesses at the respective home of each in the city of Greensboro, North Carolina, and that of the third was received by the third in the City of Knoxville, Tennessee. The witnesses stated upon examination that they appeared to give testimony because they

believed that they were required to do so as stated by the defendant Payne in his official letters to them. An objection to the testimony of each and motion to strike the testimony, made on the ground that their presence was compelled and secured in violation of the provisions of Title 25, Sec. 126 of the D. C. Code, the same being the only statutory provision to compel the attendance of witnesses, was overruled. There was no further corroboration of the testimony of these three witnesses.

8. That counsel for the Board introduced a certified copy of a record of the United States District Court for this District which showed that on the 12th day of October, 1950, the indictment against the said defendant, was, on motion of the United States Attorney, dismissed and the defendant ordered discharged by the Honorable Edward A. Tamm, United States District Judge. Counsel for the Board also introduced into evidence the certified copy of the letter, written by the Hon. George Morris Fay, United States Attorney, and addressed to the Hon. The Attorney General of the United States, seeking the permission of the Attorney General to move the Court for the dismissal of the indictment hereinbefore referred to, on the grounds that all taxes due the United States from the plaintiff had been paid and that there was no evidence that the conduct of the plaintiff was purposed to defraud the United States.

56 9. That the plaintiff testified in detail as to the value of his business, its good will, his investment, etc., the same having been generally set forth in paragraph "3." hereof. Testimony was adduced to show that in the following numbered indictments, 73868, 73869, 73870, 73871, 73872, 74660, 74661, 74662, 74658, 74657, 74656, 74655, 74654, 74653, 74652, 74651, 74650, 74649, persons likewise holders of Class "A" Retailer's licenses were indicted by the United States Grand Jury for alleged

violations of the same section and title of the Internal Revenue Code as was this plaintiff; that the fact of the return of these indictments was known to the two members of the Board who denied the renewal of the plaintiff's license, and that the said members of the Board took no action looking to the renewal of the license of the persons indicted, or otherwise.

10. That the Board has and had knowledge of the plaintiff's alleged failure to maintain proper records of wholesale sales, required to be kept by the Internal Revenue Code, and not by any Rule or Regulation of the Board or of the District of Columbia, since the 26th day of July, 1949, when an inspection of the said books was made by an Agent of the Board. The plaintiff was indicted a year later, and the indictment dismissed in October, 1950. The Board has and had the right to cite the plaintiff for any alleged violation of the law, and upon conviction, could have suspended or revoked the license. That were the license suspended for a period of 31 days or revoked by the Board the plaintiff would have had a right of Appeal to the Commissioners of the District of Columbia. That from the refusal of the Board to grant a license, there is no appeal granted by the statute and the plaintiff can only petition this Court for equitable relief.

11. That the inquiry by the Board into the moral character of this plaintiff, in consequence of his indictment as aforesaid, in the face of the Board's failure to make like inquiry in the instance of the indictments numbered above, is a denial to this plaintiff of the equal protection under the law to which he is entitled under the Fourteenth Amendment of the Constitution.

57 12. That it was conseded by Counsel for the Board that the sales alleged to have been made as stated above by the self-confessed bootleggers would not

have been in violation of any law or regulation of the District of Columbia, or the Alcoholic Beverage Control Act, even if the sales had in fact been made.

13. That upon the conclusion of the said hearing it became the duty of the Board to approve the application for renewal of the license of the plaintiff for the period beginning February 1, 1951 and ending mid-night January 31, 1952. Nevertheless, and without any finding of fact being communicated to plaintiff or his counsel of record, the Board notified counsel of record, thru his secretary, at or shortly after 4 o'clock p. m. on January 31, 1951, at a time when the Clerk's Office for the District Court of this District is not regularly open for business, that the members Payne and Mason had voted not to grant the said license renewal, but that the only member of said Board who is an attorney, James O'D. Moran had voted in favor of the granting of said license.

14. That the said action of the majority of the Board is arbitrary, capricious, unreasonable, in violation of plaintiff's constitutional right of due process under the law and of his constitutional right to equal treatment under the law. That plaintiff has exhausted his remedy with the exception of that in a Court of Equity, and that any legal remedies which he might have are inadequate. That if he is unable to keep his business open, purchase and sell merchandise in the ordinary course of business until this Court orders the Board to grant the renewal of his license, to which he is entitled, and which they must grant by the exercise of a purely ministerial function he will be irreparably injured.

15. That the plaintiff has paid the license fee required of him by law. That there is attached hereto a copy of the dissent of James O'D. Moran, Board Member, which was received at 9 o'clock a. m., just as plaintiff and coun-

sel were about to leave for Court and to execute and swear to this Complaint.

58 WHEREFORE, the premises considered, plaintiff prays:

1. That all necessary process issue herein.
2. That his cause be advanced for an early trial.
3. That the Board issue to the plaintiff, pending the hearing on the merits, a Retailer's License Class "A".
4. That the Board be enjoined, pending the hearing on the merits, from putting into effect its proposed Order, finding the plaintiff a person not of good moral character and generally fit for the trust in him reposed by the issuance of such a license.
5. That all persons, natural, corporate or body politic, be enjoined from in any manner interfering with the conduct of his business, pending the hearing on the merits, of a Retail Class "A" licensee.
6. That a temporary restraining order issue herein restraining and enjoining the Board and/or any person, natural, corporate or body politic from in any manner interfering with the conduct by the plaintiff of his business as the holder of a Retailer's Class "A" license.
7. That on final hearing on the merits, a mandamus issue, ordering the defendants to utter and issue a Retailer's license, Class "A" unto the plaintiff.
8. And for such other and further relief as may appear necessary and proper.

/s/ Hyman Minkoff
Hyman Minkoff

* * * *

59 Filed Feb 1 1951 Harry M. Hull, Clerk

On January 10, 1951, Hyman J. Minkoff, a licensee, was directed to appear before the Board to show cause to the satisfaction of the Board that he was a person of good moral character and generally fit for the trust to be in him reposed by the issuance of a license. The Board advised him it had received information that between November, 1947 up to and including July, 1949, he had made certain false and fraudulent entries in his business books and records, contrary to and in violation of Title 26, Section 2857(a) of the Internal Revenue Code, and as a result was indicted on certain charges and which thereafter were dismissed upon his payment of \$1000 in compromise and settlement.

Minkoff has held a Retailer's Class "A" license for the past 13 years and his application for a renewal of his existing license, under the Act, is a new license and subject to the provisions of Section 14 (a-1), District of Columbia Code, Title 25, Section 115 (a) 1, which provides the Board shall satisfy itself that he "is of good moral character and generally fit for the trust to be in him reposed."

After the hearing of testimony, under the foregoing Section, the Board had only two courses of action, either to issue or to deny the license. Upon the denial of a license, the licensee has no appeal to the Commissioners of the District of Columbia.

On nearly all occasions, if a licensee violates any provision of the Alcoholic Beverage Control Act, he is cited before the Board to show cause, under Section 17 of the Act, (District of Columbia Code, Title 25, Section 118) why his license should not be revoked or suspended for certain violations and upon the conclusion of the case, the Board may find him not guilty or may suspend or

revoke his license. If the license should be suspended for more than thirty days, or revoked, he may appeal the decision to the Commissioners of the District of Columbia, who have authority to modify such action.

By requiring the licensee to answer for certain conduct by an order to show cause under Section 14 (a-1), the Board has been limited in its action and the licensee has been deprived of a business stated to be worth \$75,000 without the right of appeal to the Commissioners, which right would have been granted to him had he been cited under Section 17 for violation of the Alcoholic Beverage Control Act.

Since I have been a member of the Board, all revocation of Retailer Class "A" licenses, ordered by the Board under Section 17 of the Act, have been modified by the Commissioners of the District of Columbia.

Three bootleggers from North Carolina testified that on various occasions they purchased alcoholic beverages in excess of five gallons from the licensee and that he agreed not to make certain required reports under the Federal Regulations. The licensee admitted that he made several sales to the bootleggers and that he had made entries on the Federal Forms; but denied other sales which the bootleggers claimed to have made.

60. By the very nature of the bootleggers' transactions with the licensee, their testimony should be considered by the Board with due care and caution. On such testimony it is impossible for me to brand this licensee as having an immoral character.

The Assistant Corporation Counsel, in his argument to the Board, contended that there is no violation of the law for a Retail Class "A" licensee to sell alcoholic beverages to a known bootlegger operating in another jurisdiction, and that the Board, in deciding this case, must

consider the facts and circumstances surrounding the licensee's failure to make certain entries in his Federal reports and his failure to make such reports might cause the Board to find him an improper person for a license. As indicated before, the failure to make proper entries in the Federal Forms is not contrary to the Alcoholic Beverage Control Act, but is a violation of the Internal Revenue Code. The Federal authorities investigated this matter, and after considering the same, accepted, from the licensee, the sum of \$1,000 in full settlement and compromise for any misconduct on his part.

This licensee has violated no provision of the Alcoholic Beverage Control Act for which charges could be instituted against him under Section 17. I do not believe that the Board should now further penalize him by refusing him a license, thus destroying his business for a matter which the Federal Government has already secured full satisfaction.

The most that can be said is that the licensee may have failed to make certain technical entries in his Federal reports; this is not such heinous conduct on his part as to warrant the Board in finding that he is not "of good moral character and generally fit for the trust to be in him reposed." It is my opinion, therefore, that the application for a 1951 license should be approved.

/s/ James O'D. Moran

January 31, 1951

ml

* * * *

61 Filed Feb 8 1951 Harry M. Hull, Clerk

Temporary Restraining Order Pending the Final Determination of This Cause, Whether the Same Be On Motion, by Trial or Otherwise.

Upon oral motion of attorneys for the plaintiff, the defendants being represented in open Court and having no objection thereto, it is by the Court, for good cause shown, to wit, this 8th date of February, 1951,

ORDERED, that the defendants, personally and in their official capacities, and all persons, natural, corporate or body politic, be and they are hereby restrained temporarily from in any manner interfering with the continuous and active conduct by the plaintiff of his Retail Class "A" beverage business at 1400 North Capitol Street, in the City of Washington, in the District of Columbia, pending the final determination in this Court of this cause, whether the same be on motion, by trial or otherwise; provided that the undertaking heretofore filed in this cause shall remain in full force and effect.

/s/ Edward A. Tamm
Judge

* * * *

62 Filed Feb 15 1951 Harry M. Hull, Clerk

Motion to Dismiss Complaint or for Summary Judgment

The defendants, Alan W. Payne, Agnes K. Mason, and James O'D. Moran, personally and as members of the Alcoholic Beverage Control Board of the District of Columbia, move to dismiss the above-entitled complaint.

The grounds of this motion are as follows:

1. The complaint fails to state a claim against the defendants upon which relief can be granted.
2. The complaint amounts to a conclusion of law.

3. The testimony taken in the hearing before the Alcoholic Beverage Control Board, a copy of which is filed herewith, identified as Defendants' Exhibit "C", clearly demonstrates that the action of such defendant was predicated upon substantial evidence.

4. The decision of an administrative body within the limits of its jurisdiction and authority, when supported by substantial evidence, should be sustained and not disturbed by the courts.

5. The law presumes that legal officers exercise their duties in accordance with law, and equity is always hesitant to issue injunctions where the public interests may be affected.

63 6. There is no vested right to sell intoxicating liquor.

7. Every limitation in the Alcoholic Beverage Control Act is a limitation upon the power of the Board to grant a license and not upon the power of the Board to refuse a license.

8. Title 25, Section 115(a-1) of the District of Columbia Code, 1940 Edition, is a limitation upon the power of the Board to grant a license and the Board must satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed before it acquires jurisdiction to issue a license.

/s/ Vernon E. West
Vernon E. West,
Corporation Counsel, D. C.

/s/ Robert D. Wise
Robert D. Wise,
Assistant Corporation
Counsel, D. C.
Attorneys for Defendants,
District Building.

14 A

* * * *

Filed Feb 15 1951 Harry M. Hull, Clerk

Exhibit "A"

REGISTERED MAIL
RETURN RECEIPT REQUESTED

January 10, 1951

Hyman J. Minkoff
T/A Acme Supply Company
1400 North Capitol Street, N. W.

Washington, D. C.

In connection with your application for a Retailer's License Class "A" at the above address, for the year beginning February 1, 1951, you are directed to appear before the Alcoholic Beverage Control Board in Room 3114, New Municipal Center, on the 23rd day of January, 1951, at 10:00 o'clock A.M., to show to the satisfaction of the Board that you are a person of good moral character and generally fit for the trust to be in you reposed by the issuance of such license.

This Board has been informed that you have heretofore, and during the period from November 1947 through July 1949, made certain false and fraudulent entries in your business books and records, contrary to and in violation of Title 26, Section 2857(a) of the Internal Revenue Code. As a direct result thereof you were indicted on certain charges and thereafter criminal action against you was dismissed upon payment by you of one thousand dollars (\$1,000) in compromise of the charges declared against you.

Because of the foregoing, the Alcoholic Beverage Control Board is unable to satisfy itself as required under Section 14(a-1) of the Alcoholic Beverage Control Act

for the District of Columbia that you are of good moral character and generally fit for the trust to be in you reposed by the issuance of said license.

You will be given ample opportunity at the above time and place to present such evidence on your own behalf as you feel will so satisfy the Board. You are advised that you are entitled to be represented by counsel at the above hearing, although such is not required; you are also advised that your failure to appear at the above hearing will not preclude the Board from acting in this matter.

ALCOHOLIC BEVERAGE CONTROL BOARD
OF THE DISTRICT OF COLUMBIA

/s/ Alan W. Payne

/s/ Agnes K. Mason

/s/ James O'D. Moran

Filed Feb 15 1951 Harry M. Hull, Clerk

Exhibit "B"

BEFORE THE ALCOHOLIC BEVERAGE CONTROL
BOARD IN THE DISTRICT OF COLUMBIA

IN RE: Application for 1951 Retailer's Class "A" License

Hyman Joseph Minkoff
T/A Acme Supply Company
1400 North Capitol Street
Washington, D. C.
Application #256

Finding of Fact

(1) That on December 13, 1950, Hyman Joseph Minkoff, T/A Acme Supply Company, 1400 North Capitol Street, Washington, D. C., filed an application for a Retailer's Class "A" License, for the license year beginning February 1, 1951.

(2) That by reason of certain reports regarding the manner in which the applicant conducted his business at 1400 North Capitol Street, he was directed to appear before the Board to show to the satisfaction of the Board, that he was a person of good moral character and generally fit for the trust to be in him reposed by the issuance of a license.

(3) That thereafter, on January 23, 24 and 26, 1951, this applicant was given a full hearing, at which he was represented by F. Joseph Donohue, Esquire, of the Bar of the District of Columbia, and upon consideration of the testimony of all the witnesses, and the evidence adduced, it is found:

(a) That the licensee, during the period from November, 1947 up to and including July, 1949, made certain false and fraudulent entries in his business books and records, contrary to and in violation of Title 26, Section 2857(a) of the Internal Revenue Code, and that as a direct result thereof, the said licensee was indicted on certain charges, and thereafter said criminal action against him was dismissed upon the payment by him of one thousand dollars (\$1,000) in compromise of said criminal charges.

(b) That the licensee, during the period from November, 1947 up to and including July, 1949, on numerous occasions did willfully and fraudulently fail to make certain entries in his business books and records, contrary to and in violation of Title 26, Section 2857(a) of the Internal Revenue Code.

(c) That the licensee, during the period from November, 1947 up to and including July, 1949, did willfully and fraudulently conspire with certain bootleggers operating in the State of North Carolina, and as a direct result thereof did agree with them not to make certain entries in his business books and records under certain

circumstances, and that thereafter said licensee, in pursuance of such agreement, on numerous occasions sold and delivered to said bootleggers alcoholic beverages in excess of five wine gallons, and in fulfillment of his agreement with them, said licensee willfully and fraudulently failed and refused to make the entries in his business books and records as required, and in violation of Title 26, Section 2857(a) of the Internal Revenue Code.

Conclusion

WHEREFORE, the majority of the Board is unable to satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed. The application for a 1951 Retailer's Class "A" license is, therefore, DENIED this 31st day of January, 1951, under Section 14 (a-1) of the Alcoholic Beverage Control Act.

ALCOHOLIC BEVERAGE CONTROL BOARD
OF THE DISTRICT OF COLUMBIA

/s/ Alan W. Payne

/s/ Agnes K. Mason

On January 10, 1951, Hyman J. Minkoff, a licensee, was directed to appear before the Board to show cause to the satisfaction of the Board that he was a person of good moral character and generally fit for the trust to be in him reposed by the issuance of a license. The Board advised him it had received information that between November, 1947 up to and including July, 1949, he had made certain false and fraudulent entries in his business books and records, contrary to and in violation of Title 26, Section 2857(a) of the Internal Revenue Code, and as a result was indicted on certain charges and which thereafter were dismissed upon his payment of \$1000 in compromise and settlement.

Minkoff had held a Retailer's Class "A" license for the past 13 years and his application for a renewal of

his existing license, under the Act, is a new license and subject to the provisions of Section 14 (a-1), District of Columbia Code, Title 25, Section 115 (a) 1, which provides the Board shall satisfy itself that he "is of good moral character and generally fit for the trust to be in him reposed."

After the hearing of testimony, under the foregoing Section, the Board had only two courses of action, either to issue or to deny the license. Upon the denial of a license, the licensee has no appeal to the Commissioners of the District of Columbia.

On nearly all occasions, if a licensee violates any provision of the Alcoholic Beverage Control Act, he is cited before the Board to show cause, under Section 17 of the Act, (District of Columbia Code, Title 25, Section 118) why his license should not be revoked or suspended for certain violations and upon the conclusion of the case, the Board may find him not guilty or may suspend or revoke his license. If the license should be suspended for more than thirty days, or revoked, he may appeal the decision to the Commissioners of the District of Columbia, who have authority to modify such action.

By requiring the licensee to answer for certain conduct by an order to show cause under Section 14 (a-1), the Board has been limited in its action and the licensee has been deprived of a business stated to be worth \$75,000 without the right of appeal to the Commissioners, which right would have been granted to him had he been cited under Section 17 for violations of the Alcoholic Beverage Control Act.

Since I have been a member of the Board, all revocations of Retailer Class "A" Licenses, ordered by the Board under Section 17 of the Act, have been modified by the Commissioners of the District of Columbia.

Three bootleggers from North Carolina testified that on various occasions they purchased alcoholic beverages in excess of five gallons from the licensee and that he agreed not to make certain required reports under the Federal Regulations. The licensee admitted that he made several sales to the bootleggers and that he had made entries on the Federal Forms; but denied other sales which the bootleggers claimed to have made.

By the very nature of the bootleggers' transactions with the licensee, their testimony should be considered by the Board with due care and caution. On such testimony it is impossible for me to brand this licensee as having an immoral character.

The Assistant Corporation Counsel, in his argument to the Board, contended that there is no violation of the law for a Retail Class "A" licensee to sell alcoholic beverages to a known bootlegger operating in another jurisdiction, and that the Board, in deciding this case, must consider the facts and circumstances surrounding the licensee's failure to make certain entries in his Federal reports and his failure to make such reports might cause the Board to find him an improper person for a license. As indicated before, the failure to make proper entries in the Federal Forms is not contrary to the Alcoholic Beverage Control Act, but is a violation of the Internal Revenue Code. The Federal authorities investigated this matter, and after considering the same, accepted, from the licensee, the sum of \$1,000 in full settlement and compromise for any misconduct on his part.

This licensee has violated no provision of the Alcoholic Beverage Control Act for which charges could be instituted against him under Section 17. I do not believe that the Board should now further penalize him by refusing him a license, thus destroying his business for a

matter which the Federal Government has already secured full satisfaction.

The most that can be said is that the licensee may have failed to make certain technical entries in his Federal reports; this is not such heinous conduct on his part as to warrant the Board in finding that he is not "of good moral character and generally fit for the trust to be in him reposed." It is my opinion, therefore, that the application for a 1951 license should be approved.

/s/ James O'D. Moran

January 31, 1951

21 A

Filed Jun 29 1951 Harry M. Hull, Clerk

Petitioner's #1

Registered Mail

Return Receipt Requested

January 11, 1951

Hubert Otis Short
1901 Grove Street
Greensboro, North Carolina

C A 435—51

Menkoff

v.

Payne

Dear Mr. Short:

I am enclosing a subpoena which requires your attendance before this Board on the date specified therein to testify in the case of Hyman J. Minkoff and Leon P. Minkoff, about which persons you have heretofore given written statements to the Alcohol Tax Unit, Bureau of Internal Revenue, copies of which are on file with the record in this case.

You are advised that witnesses summoned to appear before this Board and who do appear are entitled to the same fees as are paid witnesses for attendance before the District Court of the United States. In addition to such fees you are entitled to claim actual expenses for cost of travel to Washington and your return trip home. It is required that you keep an accurate record of your

travel expenses and procure receipts for such transportation, etc.

Yours very truly,

Alan W. Payne
Chairman

encl.
#256
lea

Registered Mail

Return Receipt Requested
App. No. 256

Date January 11, 1951

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Alcoholic Beverage Control Board

SUMMONS

Hubert Otis Short, 1901 Grove Street,
Greensboro, North Carolina

You are hereby directed to appear before the Alcoholic Beverage Control Board in Room 3114, New Municipal Center, 300 Indiana Ave., N. W., on Tuesday, January 23, 1951, at 10:00 o'clock A.M. to testify in the hearing on the complaint against Hyman J. Minkoff, T/A Acme Supply Company, 1400 North Capitol Street, N. W.

ALCOHOLIC BEVERAGE CONTROL BOARD

By
Chairman

This summons served this day of
....., 19..... at
o'clock.....by delivering a true copy thereof to
.....

.....
Member of the Metropolitan Police Department

64 Filed Sep 12 1951 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HYMAN MINKOFF,

Plaintiff,

v.

ALAN W. PAYNE, et al,

Defendants.

C. A. No. 435—51

Affidavit

DISTRICT OF COLUMBIA, ss:

Joseph A. Kaufmann, being duly sworn, deposes and says:

I am an attorney at law duly admitted to practice in the District of Columbia. I have been in active practice in the District since October 8, 1928.

During the last 15 years, I and members of my firm have practiced actively before the Alcoholic Beverage Control Board of the District of Columbia. We have appeared before that Board in many proceedings, as attorney for applicants for license and licensees.

In the course of our practice before the Board, we have had frequent occasion to represent licensees who have been cited for violation of the District of Columbia Alcoholic Beverage Control Act. I have on numerous occasions discussed similar proceedings with representatives of the Board and other attorneys who have also practiced before the Board. I have also made it my business to keep in touch with Board proceedings and

have thus derived a substantial knowledge of the Board's practice and procedure.

65 Based on such experience, information, and knowledge, I know of no occasion on which the Alcoholic Beverage Control Board of the District of Columbia has revoked a license or suspended one for as much as 31 days, for violations of Sections 23 (a) to 23 (f) inclusive of the District of Columbia Alcoholic Beverage Control Act or Sections 11 (c), 11 (d) and 24 B (3), of the Regulations promulgated by the Commissioners of the District of Columbia, in conformity with the power granted by the Act. In no case, to my knowledge or according to my information and belief, has the Board revoked a license or failed to renew a license for such cause.

The law and Regulations quoted of the District of Columbia Act are those most nearly like the provisions of the Internal Revenue Code, which the licensee in this case was charged for violation. Both Acts have as their essential purpose, the raising of revenue, and only incidentally, the regulation of the liquor trade.

/s/ J. A. Kaufmann
Joseph A. Kaufmann

Subscribed and sworn to before me this 11th day of September, 1951.

/s/ D. L. Grantham
Notary Public
District of Columbia

Certificate of Mailing

I hereby certify that I did mail a copy of the above and annexed Affidavit and the attached Sections of the Law and Regulations to Robert D. Wise, Attorney for

the Defendants, District Building, Washington, D. C.,
this 11 day of September, 1951.

/s/ J. A. Kaufmann
Of Counsel for Plaintiff

69 Filed Feb 8 1952 Harry M. Hull, Clerk

Supplemental Complaint

Leave of Court first had and obtained, the plaintiff herewith alleges as follows (such paragraphs being numbered to follow and continue the paragraphs of the Complaint originally filed in this case):

16. That since the filing of the original Complaint in this cause, the renewal license requested has expired, said expiration date being January 31, 1952. That before the expiration of said license the plaintiff did file an application for a renewal of his license, as if the same had been granted on February 1, 1951, in order to preserve his standing as a proposed licensee before the Alcoholic Beverage Control Board of the District of Columbia and before this Honorable Court.

17. A conformed copy of the application for such renewal, duly filed on or about November 29, 1951, for the fiscal year beginning February 1, 1952 and ending January 31, 1953 is attached hereto as an exhibit, as is also, a copy of a reply to said application from the two (2) members of the Alcoholic Beverage Control Board who refused to grant the renewal being challenged in
70 the original Complaint.

/s/ J. A. Kaufmann
Joseph A. Kaufmann
Attorney for Plaintiff
503 D Street, N. W.
Washington 1, D. C.
Executive 4440

* * * *

71 Filed Feb 8 1952 Harry M. Hull, Clerk

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

(SEAL)

Address Reply to

ALCOHOLIC BEVERAGE CONTROL BOARD
WASHINGTON 1, D. C.

November 30, 1951

Mr. Hyman Joseph Minkoff
1400 North Capitol Street
Washington, D. C.

Dear Sir:

The Board is returning your application for a Retailer's Class "A" license for the license year beginning February 1, 1952, for premises 1400 North Capitol Street, Washington, D. C., together with your certified check dated November 29, 1951, drawn to the order of the Collector of Taxes, D. C., in the amount of twelve hundred and fifty dollars (\$1250.00), both of which have just been received.

You are aware of the fact that following your application for a similar license at these same premises for the license year beginning February 1, 1951, after an appropriate hearing, this Board denied such application, following which you filed a suit in the United States District Court for the District of Columbia against this Board seeking to have such court compel this Board by writ of mandamus to issue said license. Following the institution of such action by you the court issued first a temporary restraining order and later an injunction ordering this Board and all officials of the District of Colum-

bia Government, including the Metropolitan Police Department, to not interfere with the continued operation of your retail liquor business until after a final determination by the court on the merits of the case. You are also aware of the fact that this case is still pending in such court and this Board as well as all other officials of the District Government have respected the injunction of the court and accordingly, with the court's permission, you have continued to operate your place of business without interference from any of such officials.

Very truly yours,

ALCOHOLIC BEVERAGE CONTROL BOARD
OF THE DISTRICT OF COLUMBIA

/s/ Alan W. Payne

/s/ Agnes K. Mason

encl.

lca

74 Filed Apr 11 1952 Harry M. Hull, Clerk

Memorandum

Morris, J. The complaint in this case seeks a determination that an order made by the Alcoholic Beverage Control Board of the District of Columbia (one member dissenting) on the 31st day of January 1951, whereby a majority of the Board denied the application of the plaintiff for a 1951 Retailer's Class "A" License upon the ground that said majority of the Board was unable to satisfy itself that the applicant was of good moral character and generally fit for the trust to be in him reposed,¹

¹ District of Columbia Code (1940), Title 25, Section 115.

(a) * * * Before a license is issued the Board shall satisfy itself:

1. That the applicant, * * *, is of good moral character and generally fit for the trust to be in him reposed.

be vacated on the ground that it was not supported by the evidence at the hearing and was, therefore, arbitrary, capricious and discriminatory. Further equitable relief is sought to secure the license applied for.²

The findings of the Board concerning which the plaintiff complains are in substance (a) that the plaintiff, during the period from November 1947 to July 1949, made certain false entries in his books in violation of

75 Title 26, Section 2857(a) of the Internal Revenue Code, and as a result was indicted on certain charges, and thereafter said criminal action against him was dismissed upon payment by him of \$1,000 in compromise of said charges; (b) that the plaintiff, during said period, on numerous occasions did wilfully and fraudulently fail to make certain entries in his business books and records in violation of said Title 26, Section 2857(a), of the Internal Revenue Code; and (c) that the plaintiff, during said period, did wilfully and fraudulently conspire with certain bootleggers, operating in the State of North Carolina, and as a direct result thereof did agree with them not to make certain entries in his business books and records under certain circumstances, and thereafter, pursuant to said agreement, on numerous occasions sold and delivered to said bootleggers alcoholic beverages in excess of five wine gallons, and, in fulfillment of the agreement with them, wilfully and fraudulently failed and refused to make the entries in his business books and records, as required, and in violation of Title 26, Section 2857(a), of the Internal Revenue Code.

There was a substantial disagreement between the plaintiff and the witnesses who testified as to the con-

² Temporary injunctive relief pendente lite was granted pending the determination of this case, and, as the year for which the license was applied has expired, the pleadings have been so amended that the relief sought is with respect to the license for the current year.

spiracy and the sales in excess of five wine gallons. The plaintiff consistently denied any conspiracy or agreement not to make records and any sales made in pursuance of such alleged agreement. Unquestionably the witnesses testifying to such agreement and to such sales were, if they testified truthfully, accomplices and co-conspirators, and as such, it was, of course, proper that their testimony be viewed with caution and suspicion. It was further developed, notwithstanding certain objections to some of such testimony were sustained, that at least one of such witnesses was biased against the plaintiff. This also required a weighing of the evidence of such witness in that light. Nevertheless, the transcript of the proceedings before the Alcoholic Beverage Control Board, which has been filed in this cause accompanying the motion of the defendants for summary judgment, discloses evidence upon which the Board could reasonably reach a conclusion that there was such a conspiracy and sales had been made pursuant thereto. In these circumstances, it is not for this Court to weigh the evidence and determine what its conclusion would have been.

76 A further ground upon which the plaintiff claims illegality of the Board's action is that there have been numerous instances in which those holding Retailer's Class "A" Licenses have failed to make the entries and records required by Title 26, Section 2857(a), of the Internal Revenue Code, have been indicted therefore, and made compromise thereof without having their licenses revoked or a renewal of such licenses refused, and, therefore, the action against this plaintiff was grossly discriminatory. Without passing upon the merits of such contention, it suffices that no showing has been made that any conspiracy, such as the Board found in the instant case, was present with respect to the instances mentioned. It is quite a different thing to fail to make a

record entry or report and an agreement or conspiracy not to make such required entries, unless the persons to whom the sale which required the report or entry to be made is apprehended and arrested. That is what the testimony was with respect to this plaintiff, and that goes deeper when the fitness of that person for the trust to be reposed in him is the question to be decided.

For the reasons stated, I cannot come to the conclusion that the action of the Board was arbitrary, capricious, discriminatory, or unsupported by substantial evidence. The motion for summary judgment filed by the defendants will be granted. Counsel will prepare an appropriate order to carry this decision into effect.

/s/ Jas. W. Morris
Judge

April 11, 1952.

• * * *

77 Filed May 20 1952 Harry M. Hull, Clerk

Order and Judgment

This cause having come on to be heard on the defendants' motion for a summary judgment; and points and authorities in support thereof and in opposition thereto having been filed; and oral argument by the attorneys for the plaintiff and the defendants having been heard; and a memorandum having been filed by the Court on April 11, 1952; and plaintiff having moved orally that the restraint now in effect be extended, in order to maintain the status quo, pending determination of the appeal in this cause; it is by the Court this 20th day of May, 1952

ORDERED, that the motion for summary judgment on behalf of the defendants and each of them be and the same is hereby granted; and it is further

ORDERED, that the defendants, personally and in their official capacities, and all persons, natural, corporate or body politic, be and they are hereby restrained from in any manner interfering with the continuous and active lawful conduct by the plaintiff of his Retail Class "A" beverage business at 1400 North Capitol Street, in the City of Washington, in the District of Columbia, pending the action of the United States Court of Appeals for the

78 District of Columbia on the application for a stay pending appeal, provided that said application for a stay be filed no later than May 30th, 1952; provided that the undertaking heretofore filed in this cause shall remain in full force and effect; and provided, further that in the event an appeal is not duly perfected within the time provided by law, then and in that event this stay shall expire and be held for naught.

/s/ Jas. W. Morris
Judge

* * * *

79 Filed May 29 1952 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given this 29th day of May, 1952, that Hyman Minkoff, plaintiff, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit, from the judgment of this Court entered on the 20th day of May, 1952, in favor of defendants.

/s/ Joseph A. Kaufmann
Joseph A. Kaufmann
Attorney for Plaintiff
503 "D" Street, N. W.
Washington, D. C.
EXecutive 4440

* * * *

Excerpt from Exhibit "C"

Testimony taken in the case of Hyman J. Minkoff, T/A Acme Supply Company, 1400 North Capitol Street, N. W., holder of Retailer's Class "A" License #4151, Application #256, held before the Board on Tuesday, January 23, 1951, at 10:30 A.M. and 2:00 P.M.; Wednesday, January 24, 1951, at 10:30 A.M. and 1:30 P.M., and Friday, January 26, 1951, at 10:30 A.M.

* * * *

5 MR. DONOHUE: May I, for the record, state
6 my objection to this proceeding, predicated upon
 the following facts—That heretofore on the 19th
day of April, 1945, in Indictment #73868, against Clark's,
Incorporated, and Mannie E. Lipskey and George P.
Wagner, as individuals, the indictment charging a viola-
tion of Section 2857 of the Internal Revenue Code, Sec-
tion 197.75(a) and (b) of Regulation 20, the record
showing further that on the 12th day of February, 1945
that indictment was nolle prossed; That Indictment
#73867, returned by the United States Grand Jury on
the 19th day of June, 1944 against Ben Rose for a viola-
tion of Section 2857, Internal Revenue Code, as noted
above, was nolle prossed on the 12th day of February,
1945; That Indictment #73870, returned on the 19th day
of June, 1944 against one Morris Miller, charging a vio-
lation of the same section of the Internal Revenue Code,
was nolle prossed on the 12th day of February, 1945;
Then Indictment #73871 was filed in the United States
District Court on the 19th day of June, 1944, against one
Morris Berger for an alleged violation of the same sec-
tion of the Internal Revenue Code; that that indictment
was nolle prossed on the 12th day of February, 1945;
That Indictment #73872, against one Lawrence Goldberg

was returned in the United States District Court on the 19th day of June, 1944, for an alleged violation of the same section of the Internal Revenue Code, and that on the 19th day of February, 1945, that indictment was nolle prossed: That Indictment #74660 was returned by the United States Grand Jury against one Morris Miller for an alleged violation of the same section of the Internal Revenue Code on the 20th day of December, 1944, and that on the 12th day of February, 1945, that indictment was nolle prossed; That Indictment #74656, against one Morris Berger for an alleged violation of the same section of the Internal Revenue Code was returned by the United States Grand Jury on the 20th day of December, 1944, and was nolle prossed the 12th day of February, 1945: That Indictment #74658, against Clark's, Incorporated, for an alleged violation of the same section of the Internal Revenue Code was returned on the 20th day of December, 1944, and was nolle prossed on the 12th day of February, 1945: That Indictment #74657, against the Ney Distributing Company for an alleged violation of the same section of the Internal Revenue Code was

returned on the 20th day of December, 1944 and

7 was nolle prossed on the 12th day of February, 1945; That in Indictments #74655 and #74656,

against one Dorothy Weinstein and Samson Weinstein, charging an alleged violation of the same Bureau of Internal Revenue Code, was returned on the 20th day of December, 1944 and was nolle prossed on the 12th day of February, 1945: That Indictments #74653 and #74654, alleging a violation of the same section of the Internal Revenue Code were returned against one Sam Eig on the 20th day of December, 1944, and were nolle prossed on the 12th day of February, 1945: That Indictment #74652, against one Max Miller and Meyer C. Blank was returned on the 20th day of December, 1944, this indictment alleging a violation of the same section of the Internal Rev-

enue Code, and this indictment having been nolle prossed on the 12th day of February, 1945; That Indictments #74651 and #74650, against one Maurice Milstone, alleging a violation of the same section of the Internal Revenue Code, were returned on the 20th day of December, 1944, and were nolle prossed by the United States Attorney on the 12th day of February, 1945; That Indictment #74649, against one Harry Siegel for an alleged violation of the same section of the Internal Revenue Code was returned on the 20th day of December, 1944, and was nolle prossed on the 12th day of February, 1945; That Indictment #74661, against one Ben Rose, alleging a violation of the same section of the Internal Revenue Code, was returned by the United States Grand Jury on the 20th day of December, 1944, and was nolle prossed by the United States Attorney on the 12th day of February, 1945; That Indictment #74662, against one Lawrence Goldberg, charging an alleged violation of the same section of the Internal Revenue Code, was returned by the United States Grand Jury on the 20th day of December, 1944, and was by the United States Attorney nolle prossed on the 12th day of February, 1945. I haven't called to the attention of the Board these matters, which were and are of public record, and called to the attention of the Board the fact, which the records of this Board will sustain, that in no one of these instances was an inquiry of this character conducted. I, upon that basis, object to this inquiry.

8. MR. WISE: I would like to answer Mr. Donohue's remarks quite briefly, if the Board please, by saying, one, Mr. Donohue in outlining these several indictments and several orders of nolle prosequi has not stated why these several indictments were nolle prossed. In the instant case the letter addressed to the applicant for this license states quite clearly why the present indictment against Mr. Minkoff was dismissed; and the

record, which will be brought into evidence at the proper time, will show the reason why the dismissal was asked of the court. And the letter sent by this Honorable Board to the applicant for this license, the present licensee, whose term expires, or will expire, on January 31st of this year, states quite clearly this indictment was dismissed upon the payment of a sum of one thousand dollars to the Department of Justice. I am sure that Mr. Donohue does not mean to imply that this Board has knowledge of every indictment that is returned by the Grand Jury. It has no way of knowing that—the reasons for the indictments, the reasons for the dismissal or the nolle prosequi of the same, unless such information is brought affirmatively to the Board's attention. It might very well be that these several indictments were nolle prossed because of insufficient evidence. Mr. Donohue hasn't told the Board. In this particular case the Board knows of this particular indictment, it knows it was dismissed because of a settlement made by the licensee with the Department of Justice, which was approved by the Attorney General. That is set forth in the letter to the licensee. I think Mr. Donohue's motion is certainly not well taken, nor has it anything to do with the present case. Even if the Board had knowledge of these other indictments, and even if the indictments were dismissed following settlement, and there is no showing here that they were because there are many ways an indictment may be nolle prossed—the first would be because of insufficient evidence—but even assuming that these were settled by a compromise of some kind, and assuming as Mr. Donohue has said, and assuming the facts he stated were true, that they were under this identical section of the Code, can it be said that because the Board did not take action in those cases, assuming, of course, it has had knowledge, and no knowledge has been brought

9 to the Board and no knowledge brought by Mr.

Donohue, can it be said because of no knowledge it can be dismissed; can it be said two wrongs made a right? I request the motion be denied.

MR. DONOHUE: There are two things I would like to say. One—It is incredible to me these indictments were not known to the Board because they were widely publicized. Two—The reason why they were nolle prossed can just as well be obtained by the Board as it obtained the reason in this case, and I say the reason they were nolle prossed was for the same reason this was nolle prossed, with one exception—that instead of settling in civil in the amount of one thousand dollars, in one of these instances it was for ten thousand dollars. I assume, that is the basis of my objection, that the reason the Board failed to make inquiry in these cases I have just cited is because the Board recognized that even though there were a conviction under these indictments that the offense was mala prohibita, not mala in se. There is nothing in this offense that involves moral turpitude. We are here, by your letter, on the question of good character. I say there is nothing in the nature of the offense which was charged in the indictment, even had there been a conviction, which affects a good man's character or morals. It is a violation which is mala prohibita and not mala in se.

MR. WISE: Nor is there anything in the Act which says that this Board has to have an act committed by an applicant which is mala in se. What the Act says, and Mr. Donohue is very familiar with the phraseology of the Act, and I will read it for the record—Section 14(a-1) reads, among other things, as follows: "Before a license is issued the Board shall satisfy itself: (1) That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or if a corporation, each of its principal officers and directors, is of good moral char-

acter and generally fit for the trust to be in him reposed." That is a duty which this Board must perform and a finding which it must make in the case of every applicant for a license to be issued by the Honorable Board. The

Board cannot, of course, be arbitrary and capricious, cannot refuse a license because it doesn't like
10 a man's hair or tie; but if it has some substantial reason for refusing to issue that license it may do so, and it doesn't make a bit of difference whether his act is mala prohibita or mala in se—it is for the Board to decide. No one but this Honorable Board may make that decision. The Act of Congress says this Board must perform that duty and must satisfy itself as a condition precedent to the issuance of any license.

MR. DONOHUE: I want to say that the statute was passed by Congress on the 24th day of January, 1934. That statute was in force and effect the first day of February, 1945, when, in the face of pending indictments, in the number which I read to the Board, the applications of the persons and corporations there referred to were acted upon by this Board and favorably because these indictments were not dismissed by nolle prosequi until the 12th day of February, 1945 and the licenses for the license year 1945 and 1946 were issued on the first day of February. Surely this Board if it reissued a license must have come to the conclusion that in the absence of a conviction, on the ground the licensee had been convicted of a felony, I must assume the Board took the view that this offense was not an offense that reflected upon one's moral character. On the first day of February, 1946, the licenses to these individuals and corporations were again reissued by this Board, on the face of the fact that on the 12th day of February, 1945, during that license year, these licensees had done the same as this licensee, even to a greater degree—they compromised.

MR. WISE: I think we should be exact. Mr. Donohue has read from a piece of paper certain indictments and the indicated results of the indictments. He is going no further. Now, Mr. Donohue has said in one of his statements that one of the cases was settled for a great deal more money, to wit, ten thousand dollars, and he makes other points and is trying to tell the Board about other cases. Let him be specific. But even if he is specific, and assuming each and every other case about which he now talks was a violation of this identical act and was settled by a compromise approved by the Attorney
 11 General, that would have nothing to do with the Board's action in this instant case.

MR. PAYNE: Gentlemen, the motion is denied.

* * * *

13 *Direct Examination of Leard Evander Lisk*

BY MR. WISE:

Q Will you kindly state your full name? A Leard Evander Lisk.

Q And where do you live? A Greensboro, North Carolina.

Q What is your address in Greensboro? A Now I live on Englewood Street, 911.

Q Do you know Mr. Hyman J. Minkoff? A Yes, sir.

Q Do you see him here today? A Yes, sir.

Q Will you tell the Board, please, where he is? Identify him, please. A This gentleman here (indicating).

Q Seated to your immediate left and to the immediate right of Mr. Donohue, his attorney? A Yes.

Q Will you tell the Board, please, the circumstances under which you first met Mr. Minkoff?

MR. DONOHUE: I object to the question.

MR. PAYNE: On the grounds that?

MR. DONOHUE: The Board informed us that we were here on a question of character, predicated upon

the assumption that from November, 1947, through July, 1949, the respondent made certain false and fraudulent entries; therefore, I take it that the subject of this
 14 inquiry is limited by your letter, and in the terms of your letter, on the question of entries that were made by this respondent fraudulently in his books. Therefore, the circumstances under which this witness met him is not material and this witness is only able to testify about entries.

MR. WISE: I can't paint the picture all at one time. It has to paint itself gradually. No artist can do that.

MR. PAYNE: The Board presumes that would be adduced later to the matter of the letter of January 10th. Objection overruled.

MR. WISE: Please state those circumstances. A Well, I went to this store with Bob Hill—

Q H I L L? A Yes. It was in 1947, I believe, the first time I was there.

Q And the approximate month, if you remember? A I believe it was in November.

Q November of 1947. Who, if anyone, was with you?

A Walter Pridemore, Bob Hill, and myself.

Q Is Mr. Pridemore here today, sir? A Yes.

Q And do you know where Mr. Minkoff's store is located? A Yes, sir.

Q Whereabouts? A On North Capitol Street.

Q And will you tell the Board, please, what you did and whom you saw when you went to the store? A Mr. Minkoff, here, and his brother.

Q And do you recall his brother's name, sir? A Leon Minkoff.

Q What did you do when you got into the store? A Well, we bought some whisky.

Q How much whisky did you buy, if you recall? A It was thirty-four or thirty-five cases.

Q And do you recall the brand of whisky you
15 got at that time, sir? A It was Seagrams and, I
believe, Park and Tilford.

Q Do you recall what you paid for it? A No, I
don't. I believe it was thirteen hundred and twenty dol-
lars.

Q Will you tell the Board, please, whether this whisky
was taken off the shelf or whether it was in cases, or
just how it was given to you? A It was in cases.

Q Do you recall the number of cases you got? A It
was taken out of the cases—

Q Do you recall how many cases you bought and re-
ceived for thirteen hundred dollars? A Thirty-four or
thirty-five cases.

Q You started to say what was done with the whisky?
A We took it out of the cases and put it in shopping
bags.

Q By "we" you mean who? A Pridemore, myself,
Hill, and a colored fellow.

Q Was this colored man on the premises at the time?
A Yes, sir.

Q Did you see the colored man have any conversation
with either Mr. Minkoff or his brother? A Well, I don't
remember whether he talked with him or not, but he was
in the store then.

Q Did you see Mr. Minkoff or his brother give any
instructions or say anything to the colored man? A I
don't—I don't remember whether he—He had him help
us sack it up.

Q Had him help you sack it up. Where did you
sack it up? A In the back of the store.

Q And where was Mr. Minkoff or his brother at the
time you were sacking up this liquor? A Well, I don't
remember; they were around in the store there, I don't
remember where exactly.

16 Q To whom did you pay this thirteen hundred
and twenty dollars? A Mr. Minkoff.

Q And after you paid him the money did you ask him if he would do something with the liquor about sacking it up, or did he say anything about that? A I told him I would have to put it in shopping bags to be able to get it all in my car.

Q What did he say then? A I don't remember what he said then, that far back.

Q Where was your car parked with reference to the store? A I believe it was out on the curb, the curb on the street there.

Q What kind of tags did your car have on it? A North Carolina.

Q Did Mr. Minkoff or his brother ask you for your name and address? A Yes, sir.

Q And did Mr. Minkoff and his brother or either of them say anything to you at the time you took this amount of whisky and transferred it to the shopping bags? A Well, I don't remember what he said when we were doing that; that was so long ago I don't remember what was said while we were bagging it up or anything. I don't remember.

Q Did you at any time obtain the telephone number of Mr. Minkoff? A Yes, sir.

Q Will you tell the Board, please, the circumstances under which you obtained his telephone number? A Well, I was to call if I was picked up.

Q What do you mean by that? Who told you that and what was the conversation? A I was told if I was caught—

Q Who told you? A Mr. Minkoff.

17 Q This Mr. Minkoff seated here? A Yes.

Q He told you what? A If I was picked up on my way home to call so he could enter it in his book.

Q Did he say by whom picked up or by what? A Picked up by the police.

Q If you were picked up by the police you were to do what? A Call him so he would know, so he could enter it in his books.

Q Did he tell you what he was going to enter in his books? A The whisky sale.

Q And did you ask him anything about that at the time? A What do you mean "ask him anything about that"?

Q When he gave you his telephone number and told you if you were caught by the police to call him so he could enter it in his book did you ask him anything about that at that time? A He said it wouldn't be on the record, I wouldn't have to pay taxes on it or anything; it would be billed to me.

Q What did Mr. Minkoff say, if anything, if he received no telephone call from you? A Well, if I got through all right I wouldn't call him; I would just call if I was picked up.

Q Did he say he would make any record of the sale if you didn't call?

MR. DONOHUE: I object.

MR. WISE: He might say "no" and I am concluded.

MR. DONOHUE: I am suggesting the question is leading. We are entitled to know the conversation without prompting.

MR. WISE: I will rephrase the question.—Did Mr. Minkoff say what he would do or would not do if you did not call him on the telephone? A Well, he said that if I didn't call him that he would know I got through all right and he wouldn't make an entry in his books. Is that what you mean?

18 Q I see. Now, did there come a time, Mr. Lisk, when you had occasion to return to Washington? I will put that in this form—Did there come a time, Mr. Lisk, when you had occasion to again return to Mr. Min-

koff's licensed premises? A Well, I came back later and got some whisky.

Q I see. How much later and the approximate date?

A Let's see. It was, I believe it was July, I believe, in 1949. It was on a Saturday, I believe. It was on Saturday, I believe; it was the 23rd of July, I believe it was, and I got twenty-two cases and—

Q From whom did you get it? A I got it from Leon Minkoff.

Q Is that at the same premises about which you just testified, on North Capitol Street? A Yes.

Q Do you recall what kind of whisky it was? A Yes. It was cheap brands. I believe it was Old Jasper, Cream of Kentucky, and Pall Mall Gin. I am not sure of the brands; I think that is what it was. And some Tom Collins mix and I believe I got two cases of Seagrams.

Q How much money did you pay for this, sir? Just your best recollection. A I believe it was about six hundred dollars. I am not sure.

Q How was this liquor delivered to you, Mr. Lisk? A It was the same as the other; I put it in shopping bags just like the time before.

Q Where was that done? A In the back of the store there.

Q And did anyone connected with the premises assist you in putting this liquor into the shopping bags? A Yes.

Q Who? A The colored boy again.

Q The same colored boy? A Yes, sir.

19 Q Did you see Mr. Hyman J. Minkoff or Leon

P. Minkoff on the premises at that time? A I saw Leon, not Mr. Minkoff here.

Q Where was he when you and this colored boy were transferring this liquor? A He was in the back with us.

Q And did he say anything at that time, sir? A I don't remember what he said at the time when we was

shopping it up. What was said, I believe it—I don't believe I do.

Q Anything happen after that en route back to your home? A Yes. I spent Saturday night in a tourist camp and then I heard—

MR. DONOHUE: I object, if the Board please. Certainly we are not bound by what happened at a tourist camp, we run a package store on North Capitol Street.

MR. WISE: It is all a chain of events.

MR. DONOHUE: It might be a chain of lightning. It is not for the purpose we are here—that we made a fraudulent entry in our books.

MR. PAYNE: Objection overruled.

MR. WISE: Proceed.

THE WITNESS: I spent Saturday night in a tourist camp; then I heard—

MR. WISE: Not what you heard—what you did. A Well, I stayed there and went on home Sunday morning.

MR. DONOHUE: That is an interesting by-play, but not pertinent to the evidence here. He said he went home from the tourist camp.

MR. WISE: You mean you want the name of the party he took the room with?

MR. DONOHUE: I assume you are going to state Mr. Minkoff was there.

MR. WISE: Proceed. A Well, I went on home and found out that I had been tipped off.

20 MR. DONOHUE: I object. I ask it be stricken.

MR. PAYNE: Just what you know.

MR. WISE: Just what you did, what happened? A That is about all I know that happened.

Q Did you make any other trips after this one, Mr. Lisk—that is, to 1400 North Capitol Street? A I don't remember if it was after or before—Hubert Short, Luther Adams, and myself, we were up here in a truck and bought some—I don't remember how much it was.

Q Do you remember the approximate date that was that you and Short and Adams were up in the truck?

A No, I don't; it was pretty close to the time I was up and got the twenty-two cases.

MR. MORAN: Some time around July, 1949? A Yes, sir, I believe it was.

MR. WISE: But you are not sure whether it was before or after? A No, sir, I am not.

Q Will you tell the Board, please, what you did on this occasion? A Well, we got the whisky and put it in the truck. We put it in cases that time.

Q How much whisky? A I believe about forty cases.

Q Do you remember what kind it was? A It was all cheap brands. I believe it was Park and Tilford, Carstairs, Cream of Kentucky, and, I believe, some Old Thompson—I am not sure of that brand.

Q From whom did you purchase this whisky at that time? A From Leon Minkoff.

Q Did you see Mr. Hyman J. Minkoff there at that time? A No, sir.

Q Do you remember how much you paid for this whisky? A No, I don't. Shorty and myself bought it together. I don't remember what we paid. We just split it up.

21 Q At that time did Mr. Leon Minkoff say anything to you about it or give you any specific instructions? A He told me if we got caught to be sure and call.

Q I meant to ask you before, was the telephone number furnished? A Yes, sir.

Q And was your name and address taken on this occasion? A Yes, sir.

22 MR. WISE: And taken by Mr. Leon Minkoff, is that right, sir? A Yes, sir.

Q Did you ask Mr. Leon Minkoff, at that time, why he wanted you to call him in case you got caught? A He

wanted us to call so he could put it in his books. It would not be charged against us if we didn't get caught.

Q Did you make any other trips up to Washington, to 1400 North Capitol Street, Mr. Lisk, after this? A I don't think so. I made one or two, maybe I might have made three or four trips that I didn't get caught on; I don't remember the times or the dates. The stuff was caught twice.

Q Now, when the stuff was caught on these two occasions, what did you do on each occasion? A Called in and reported.

Q Called whom? A Acme Liquor Store.

Q Whom did you talk to? A I asked to speak to Mr. Minkoff; I asked for Hyman Minkoff.

Q Did some one come to the telephone at that time? A Yes, sir.

Q And what did you tell that party who came to the 'phone at that time? A I told them we got caught, that is about all.

Q Did you tell him your name? A Yes, sir.

Q And what did he say when you told him that you got caught, after giving him your name? A He said, "O.K.," that is about all I know of—he said, "O.K."

Q Is that true of each of the occasions that you speak of now, sir? A Yes, sir.

23 Q The Chairman has asked again if you could specify the dates of these occasions when you got caught and when you called in and talked with the party on the telephone, after you asked for Mr. Hyman Minkoff. Can you place those dates, sir? A Well, I remember one. I called from from Dillwyn, Virginia, November the 19th, I believe it was '47.

Q 1947? A Yes, sir. I am not sure about the other one because Pridemore was driving the other car.

Q This truck that you speak of, what kind of tags did this truck have on it? A North Carolina.

Q I see; the same as the passenger car, is that right, sir? A Yes, sir.

* * * *

24

Cross Examination

BY MR. DONOHUE:

Q When did you come to Washington recently? A You mean to get whisky?

Q No, for the purpose of testifying in this proceeding? A I don't remember the date.

Q Did you come this morning? A I was up here once before.

MR. WISE: I don't think the witness understands the question.

MR. DONOHUE: You are here now. When were you last in North Carolina?

MR. PAYNE: When did you leave home? A Last night.

MR. DONOHUE: I think he understands. When you left home last night, how did you travel to Washington? A I drove up—drove my car.

Q Was it your purpose when you left home to come here to testify? A Yes, sir.

Q When were you first informed that you were to be here today for the purpose of testifying? A Well, I could look on the letter and tell you.

MR. DONOHUE: Suppose you do that.

(The witness takes a letter from his pocket and looks at it.)

WITNESS: This is dated January 11, I guess that was the day I got it.

Q From whom did you receive that letter? A The postman.

Q By whom was the letter signed? A I didn't look to see.

Q Suppose you take a look now? A All I know is that he said to be here and I thought I better be here—Alan W. Payne.

Q When did you receive that letter? A I guess it was January the 11th—no, it was mailed the 11th; 25 I don't know what day.

Q Over and above that letter, did you receive any subpoena to cause you to appear here today? A I guess that is what this is supposed to be—it is a summons, I guess it is about the same thing.

Q Before you left home to come here was any arrangement made with you for the purpose of paying your transportation and expenses to come here? A That is what it says in the letter.

MR. DONOHUE: I move for the admission of the letter in evidence.

MR. WISE: I have no objection.

MR. PAYNE: That is part of the Board's records, Mr. Donohue; you can see it.

(Mr. Lisk gives Mr. Donohue the letter.)

MR. DONOHUE: You have not yet received the fees to which reference is made in this letter? A No.

MR. PAYNE: Mr. Donohue, do you wish to make the letter a part of the records?

MR. DONOHUE: Yes.

MR. PAYNE: The Board then will incorporate the carbon copy of the letter in the records, and the summons, so that the witness may have the letter.

WITNESS: I am not up here for the money I am getting out of this; I don't care whether they pay me or not. I am up here because I got liquor charged to me that I didn't get. If it was not for that, I would not be here.

MR. DONOHUE: Will you tell us about the liquor you were charged with? A I was charged with two hundred and some cases of I. W. Harper, a high priced liquor—I believe it was two hundred and something, and

James E. Pepper, I believe those are the brands, all bourbon. I never bought any of those brands.

Q Did you pay for these whiskies? A That is
26 what I am telling you.

Q Did you pay for these whiskies? A I paid for all I bought.

Q Did you pay for the James E. Pepper? A No.

Q Who charged you with buying these brands? A Mr. Minkoff and he billed it to me; it was my name on the papers, with the 22 cases that I really bought.

Q Where is that bill? A The paper was showed to me with the 22 cases that I bought and put in the Lincoln Coupe—22 cases of cheap whisky. At that time if I had had more money to buy it, I would have filled my car.

Q When did you buy 22 cases of what you call "cheap whisky"? A It was July the 21st, 22nd or 23rd.

Q That is the transaction you testified to? A It was on Saturday.

Q That is the transaction you testified to a few minutes ago? A Yes, that I did get; I never bought two hundred cases.

Q You got that 22 cases and paid for it? A Yes, sir.

Q When were you informed by anybody that Mr. Minkoff had charged you for some two hundred cases that you didn't get? A Well, Mr. Gill, I believe his name is, in the Post Office Building at Greensboro, questioned me about it.

MR. WISE: I object to any conversation between this witness and Mr. Gill because it would be hearsay.

MR. DONOHUE: What is the Board's ruling?

MR. PAYNE: The Board is here this morning, gentlemen, to get all the information that can be set before it, and if this has to do with the matter in question, I think it is a proper question and the objection is overruled.

MR. WISE: It may go pretty far afield and we may be here for several weeks.

MR. DONOHUE: That is quite possible judging by direct examination.

27 MR. MORAN: The direct examination has not been very long.

MR. DONOHUE: May I say to the Board, the purpose of the question is directed to the motive of this witness in testifying; he is not here for the money, he is here because he was charged with 200 cases. I want to find out who charged him.

MR. PAYNE: Did you receive a bill from Mr. Minkoff? A No, sir. I would have to pay taxes in North Carolina on some 200 cases I didn't get. The whisky was not charged; it was billed; it was not a charge that I owe him, it was billed to me, maybe somebody else got it, I didn't get the whisky.

MR. MORAN: Charged to you on the Federal forms that Mr. Minkoff sent you? A It was charged to me that I got the whisky.

MR. DONOHUE: When did you first learn that Mr. Minkoff had charged you with 200 cases of whisky that you didn't get? A Mr. Gill read the stuff off to me and some of the brands I recognized and some I didn't; but none of the bourbons—James E. Pepper, I. W. Harper and stuff like that; I never bought any of that.

Q Did you see anything that charged you with that? A He had it all wrote down, copied off. I remember the 22 cases I bought, Old Jasper and stuff like that—\$18.00 a case, I believe.

Q It is your statement, I take it, that Mr. Gill showed you a copy of something from Mr. Minkoff's books, is that correct? A Yes.

Q He told you it was from Mr. Minkoff's books and he told you by that record you were charged with having received 200 cases of whisky that you didn't get? A That is right.

Q That made you pretty sore? A Yes, it did.

Q You said that you would have to pay taxes on it in North Carolina?

MR. WISE: I object, this witness is not on trial.

28 MR. DONOHUE: This witness is on cross-examination, if the Board please.

MR. WISE: You are going away beyond the scope of the direct examination.

MR. DONOHUE: I am permitted to.

MR. WISE: This witness is not on trial and we are not going to subject him to any undue embarrassment.

MR. PAYNE: The objection is sustained.

MR. DONOHUE: You stated that you would have to pay taxes on these 200 cases of whisky? A Yes.

Q Where would you pay those taxes? A I don't know.

Q Why do you say you would have to? A You usually do. I have paid enough fines down there, I didn't figure I had to pay it.

Q You have never paid it before? A That is right.

Q How old are you? A Thirty-three years old.

Q And what is your present address? A 811 Englewood Street.

Q Greensboro? A Yes, sir.

Q How long have you lived there? A About eight years, I guess, at that address, about 17 or 18 years in Greensboro.

Q Have you lived continuously in Greensboro? A For 17 or 18 years.

Q Have you ever been away from Greensboro for any period of months? A No; before that I came from Rockville.

Q Did you ever see the books and records in the store of Mr. Minkoff? A No, sir.

29 Q And the only information you have about being charged—let me ask you, do you know whether or not the whiskies which you bought at Mr.

Minkoff's store are registered in his book? A I don't know if they are registered or not; they must have been.

MR. WISE: I object to speculation.

MR. PAYNE: No, you don't know.

MR. DONOHUE: Then you have never seen Mr. Minkoff's books, have you? A No, sir.

MR. DONOHUE: I again move to strike the testimony of the witness.

MR. PAYNE: The motion is overruled.

* * * *

30 *Direct Examination of Walter J. Pridemore*

BY MR. WISE:

Q Will you kindly state your full name? A Walter James Pridemore.

Q Where do you live? A Knoxville, Tennessee.

Q Do you know Mr. Lisk who has just testified? A Yes, sir.

Q And do you recognize the gentleman seated to your immediate left? A Yes, sir.

Q Who is he? A His name is Mr. Minkoff.

31 Q Do you know his full name, sir? A Hyman, I believe.

Q Hyman J. Minkoff? A Yes, sir.

Q Will you tell the Board please where you first met Mr. Minkoff? A In a whisky store over there.

Q Over where? A On Capitol.

Q Would that be 1400 North Capitol Street, Washington? A I am not sure of the number.

MR. PAYNE: Do you know the name of the store? A Acme Supply Company.

MR. WISE: And will you tell the Board please, the circumstances under which you first met Mr. Hyman J. Minkoff? A I met Mr. Minkoff on—I was with a couple of friends.

Q What are those friends' names? A Mr. Lisk and Mr. Hill.

Q Will you tell me, please, the date or the approximate date that you first met Mr. Minkoff? A I don't know the date; I think it was in 1947.

Q And how did you get to his store from your home? A We came up through Virginia.

Q Came by automobile I take it? A That is right.

Q What kind of tags did the car have, if you know? A North Carolina tags—I am not sure.

Q When you went into the store sometime in 1947, will you tell the Board please, just what you did and what you saw? A Well, we went in and this boy, Hill, introduced us to Mr. Minkoff. He said we wanted to get some whisky, and we got the whisky; it was loaded onto the car.

Q Let me interrupt you, Mr. Pridemore, will you tell me, please, the amount of whisky you got on this occasion, and the brands, if you recall? A I imagine
32 it was around 25 cases; 20 or 25 cases.

Q And the brands? A I am not sure of that.

Q Do you know what you paid or what was paid for the whisky? A I am not positive.

Q Your best recollection? A Around \$25 or \$30.

Q That would be a case? A Yes, sir.

Q Do you know the total amount paid for the cases on this first trip? A No, I don't; I didn't purchase it.

Q Do you know who did purchase it? A Mr. Lisk.

Q And do you know to whom the money was paid at that time? A Mr. Minkoff.

Q Mr. Hyman J. Minkoff? A Yes, sir.

Q Did you see another man on the premises having a similar name at that time? A Yes, his brother. I understand that his name is Leon.

Q When the money was paid to Mr. Hyman J. Minkoff, do you know whether your name and address, or whether Mr. Lisk's name and address was ascertained, or asked of each of you, at that time? A I don't remember.

Q I see, sir. Now, you spoke about loading the cases, the whisky on the automobile, is that right, sir? A Yes, sir.

Q Where was the automobile parked at that time? A Next to the store.

Q In the front or the back? A I believe it was in the back, on the side.

Q Where was the whisky put? A Put in the
33 car.

Q Which part of the car? A I think in the trunk-end part of the car; the back.

Q I see, sir. How was it put there, Mr. Pridemore? A It was put in shopping bags, sometimes the cases were cut in half so we could get them in the car.

Q You emptied the cases and put the bottles in shopping bags. Did you do that or did someone else do it for you? A We had help.

Q By "help," you mean just who helped you? A I think he had a colored boy.

MR. PAYNE: You said, "he had a colored boy," whom do you mean? A Mr. Minkoff had a colored boy.

MR. WISE: Where was this change made; was it inside the store or outside the store? A Inside the store.

Q When you purchased the whisky, was it in cases or taken off the shelf? A It was in cases.

Q And you transferred it from the cases to shopping bags? A Yes, sir.

Q Inside the store? A Yes, sir.

Q Where was Mr. Minkoff when the transfer was made inside the store to the shopping bags? A He was present.

Q Just where was he, if you can give me a description? A In the store or in the office, I don't remember just where.

Q What did he say at the time the transfer was being made? A Nothing that I can recall.

Q Who gave the colored boy instructions to assist in the transferring of these bottles from the cases to the shopping bags? A Mr. Minkoff.

Q And having given those instructions, did he
34 remain around and and watch you fellows transfer the bottles from the cases to the shopping bags, or what did he do, if anything? A Yes, I think he did.

Q Did he say anything during the transferring of these bottles of liquor? A Nothing that I can recall.

Q Did you hear Mr. Minkoff give to Mr. Lisk his telephone number? A It is possible; I could not say; I don't remember.

Q Did you hear any conversation about a telephone number or a call that was to be made? A If we were picked up, we were to call him.

MR. PAYNE: Who said that? A Mr. Minkoff.

MR. WISE: Just what was said by Mr. Minkoff at that time and to whom was it said? A If, at any time, we was picked up by the law or the officers, we were to call him so he could enter it. I don't know what that meant, "so he could enter it."

Q Did Mr. Lisk, or you, ask Mr. Minkoff what he meant by "entering it," in case you got caught by the law? A I don't know what he meant by that, "so he could enter it in his books," I don't know.

Q Was any arrangement made for paying for this telephone call from wherever you might be apprehended to Mr. Minkoff? A I don't remember that. I didn't hear much of the conversation at the time.

Q Did there come a time, Mr. Pridemore, when you had occasion to return to Washington after this initial visit? A Yes, sir.

Q And what date was that, please, sir? A It was not very long; a few days after that.

Q I see. And where did you go at this time and who was with you, if anyone? A I went to the Acme Supply Company with Mr. Lisk.

Q You and Mr. Lisk were together, is that
35 right, sir? A Yes, sir.

Q How did you make the trip that time? A By car.

Q By automobile; the same automobile, sir? A No, I think this was a Buick.

Q Do you know what kind of tags this car had on it? A North Carolina.

Q When you got to the store, what did you and Mr. Lisk do on this occasion? A We purchased some whisky as before.

Q Do you know how much you purchased—the amount, brands and what was paid for it? A I am not sure of the amount or the brands; I imagine around 30 cases.

Q Did you have any interest in the liquor? A No, sir.

Q Now, when the liquor was delivered, to whom was it delivered? A I don't under the question.

Q Was it given to you at that time, following the purchase, or given to Mr. Lisk? A It was put on the car, if that is what you mean.

Q Put on the car; who put it on the car? A All of us together.

Q How was it put on the car? A The same as before.

Q "The same as before," by that you mean what, sir? A It was put in shopping bags.

Q I want to get this in particular, if you will, please sir—was the liquor in case lots? A Yes, sir.

Q Where was the transfer made from the cases to the shopping bags? A Inside the store.

Q Who was present at that time, sir? A I am not positive whether he was there or not.

36 Q By "he," whom do you mean? A Mr. Minkoff.

Q Did you see Mr. Leon Minkoff at that time? A One of them was there.

Q Do you know to whom the money was paid? A One of the two.

Q Do these men look alike? A Similar in appearance; Leon looks younger than this one.

Q Now, did you see a colored boy on the premises on this occasion? A I think so.

Q What did that colored boy do, if anything? A He always helped.

Q What did he do on this occasion? A The same as before; take the whisky out of the cases and put it in the shopping bags, and put it in the back of the car.

Q Did you also participate in this, you and Mr. Lisk? A Yes, sir.

Q Did Mr. Minkoff say anything at that time? A I am not sure. I was not near him all the time.

Q Was anything said at that time about a telephone call? A We were always told if we got picked up to call.

Q Was anything said at this particular time? A I am not positive.

Q This may be repetitious; if it is, I am sorry, if the Board please. Did Mr. Minkoff ask Mr. Lisk or you for your name and address at this time? A No, sir.

Q En route home, did anything unusual happen?

MR. DONOHUE: I object, if the Board please. It is beyond the confines of the store.

MR. WISE: It may be a chain of events, if the Board please.

MR. DONOHUE: That is what you said last time.

MR. PAYNE: Objection is overruled.

MR. WISE: On your way back home did anything unusual happen? A I don't think it did that time.

Q Did there come a time when you had occasion to return to Washington? A Yes, sir.

Q Now, can you give me the approximate date of this return visit? A Well, it was not very long after that.

Q By that you mean several days or several weeks?
A Several days.

Q What kind of transportation did you use on this return trip? A A Buick.

Q The same Buick that you had used on the preceding occasion? A Yes, sir.

Q Same kind of tags? A Yes, sir.

Q With whom did you come to Washington on this occasion? A Mr. Kennedy, I believe—not Mr. Kennedy; Mr. Hill and Mr. Lisk.

Q Where did you go, sir? A Acme Liquor.

MR. PAYNE: On North Capitol Street? A Yes, sir.

MR. WISE: When you got to the Acme, whom did you see when you got inside the premises, if anyone? A One of the Minkoffs was there; I don't think both of them were there.

Q Did you see a colored boy at that time? A Yes, I think he was there.

Q What did you do when you got on the premises on this occasion? A Purchased some whisky.

Q Tell me how much, please, sir; how much did you purchase and the brands, that is quite important? A I am not sure of the brands; I think we purchased about 30 or 35 cases.

Q Do you recall how much was paid for these cases of whisky? A I never did know what was paid.

38 Q Did you have any interest in the purchase of these whiskies? A No, sir.

Q And who paid for the whiskies and to whom was the money paid, if you know? A Mr. Lisk paid for it; he paid Mr. Minkoff.

Q Would that be Mr. Hyman J. Minkoff? A I would not swear to that, sir.

Q Now, at the time these whiskies were ordered and paid for, did Mr. Minkoff ask Mr. Lisk for his name and address? A No, sir; I don't think so.

Q Do you know if he gave him any bill of sale of any kind? A I am not sure.

Q Was anything said then, in your presence, by Mr. Minkoff about a telephone call? A I don't remember, sir.

Q Now, how were the cases of whisky handled, Mr. Pridemore? A They were put in shopping bags and packed in the car.

Q Was anything said, at that time, by Mr. Minkoff about transferring these bottles of whisky from the cases to the shopping bags? A I don't remember.

Q Do you know at whose suggestion they were transferred from the cases to the shopping bags? A I don't remember who suggested it.

Q Where was Mr. Minkoff, if you know, at the time the transfer was being made? A There in the store.

Q How close was he to you when the work was being done? A You mean how many feet?

MR. WISE: Yes. A He was close enough to see what was going on.

Q I see, and where were these bottles loaded in the vehicle? A Around at the side of the store.

Q Where were they put in the vehicle? A In the trunk, inside the car.

39 Q En route back home, did anything unusual happen on this occasion?

MR. DONOHUE: Object.

MR. PAYNE: Overruled.

MR. WISE: Proceed.

WITNESS: Yes, we were stopped in Dillwyn and—

MR. WISE: Who stopped you, sir? A An officer.

MR. PAYNE: How do you spell the name of the town?

A DILLWYN, I believe, and the car was confiscated and the whisky. Mr. Lisk put up bond and we were allowed to go on home.

MR. WISE: Now, do you know, at that time, whether any telephone call was made by either you—by either Mr.

Lisk, in your presence, or by you, to Mr. Minkoff? A I don't recollect; I didn't make one.

Q Did you have occasion to return to Washington following this event? A Yes, we returned.

Q I see, sir, and how soon after this arrest and confiscation did you return to Washington? A I think it was quite a few days.

Q With whom did you return? A I think it was Mr. Lisk.

Q What sort of a conveyance did you use? A We used a Ford.

Q What kind of license plates did it have on it? A North Carolina.

Q Where did you go and whom did you see? A We went to the Acme Supply.

Q That is in Washington, D. C., sir? A Yes, sir, and we purchased more whisky.

Q And whom did you see on the premises on this occasion? A Either one of the Minkoffs, or both of them, I am not positive.

Q Did you see anyone else—any other employee? A The man inside the store there.

40 Q Would that be the colored boy? A Yes, I am pretty sure he was there.

Q What did you purchase on this occasion? A Purchased about 20 cases of whisky.

Q Who paid for it? A Mr. Lisk.

Q What brands were purchased on this occasion, sir? A I am not sure.

Q And to whom was the money paid? A One of the Minkoffs.

Q I see. Were you present when the money was paid to one of the Minkoffs? A Yes, sir.

Q Did you hear one of the Minkoffs say anything to Mr. Lisk at that time? A No, sir; I am not positive that I did.

Q Was anything said at this time about your prior trip? A I don't remember.

Q And at that time do you recall whether Mr. Minkoff asked either your name and address or Mr. Lisk's name and address? A I don't think so.

Q How was this whisky handled, sir? A The same as before—transferred from the cases to shopping bags.

Q Let me follow you, Mr. Pridemore, I am a little thick headed—was it on this occasion that Mr. Lisk said, "Let's put them in the shopping bags," or whose suggestion was it? A Well, no one in particular I don't believe. It had to be done to get it packed into the car. Sometimes we might have put a case in there.

Q And when you made your return trip, did anything unusual happen on this trip? A No, sir, I don't think so.

MR. PAYNE: You got home all right? A Yes, 41 sir.

MR. WISE: Did you again have occasion to return to the store of Mr. Minkoff? A Yes, sir.

Q What date was that, sir? A That was not very long after that.

MR. PAYNE: At this time, I would like to ask if that would be in 1947, like you said at first, or in 1948? A Let me see. I quit—I have been away from it about two or three years now.

Q You said your first visit with Mr. Lisk and Mr. Hill was sometime in '47, you didn't remember the date. I am wondering now whether these subsequent trips that you told us of were still in '47, or would they have gone over into '48? A I imagine some of them might have been in '48.

MR. MORAN: How many trips did you make with Mr. Lisk? A Four or five.

Q From what period to what period—1947 to 1948? A Possibly.

MRS. MASON: When did you quit—in 1948? A I left Greensboro in—let me see, I will be gone—have been gone at least two years.

Q In those two years, have you made any trips up here? A No.

Q So that you are testifying to things that happened before 1948, is that right? A Yes.

MR. PAYNE: So that would have been before '48 actually? A Yes.

MR. PAYNE: All right. Now, the last question Mr. Wise asked was whether you returned again.

WITNESS: We returned again—Mr. Huff and myself.

MR. WISE: Anyone else with you besides you and Mr. Huff? A No, sir.

42 Q All right, sir. What kind of a conveyance did you use at that time? A We used a Ford.

Q What kind of license plates did it have on it? A North Carolina.

Q All right, sir. Now, where did you go? A Acme Supply.

Q Whom did you see when you got there, if anyone? A The Minkoffs.

Q You mean by that both Mr. Hyman Minkoff and Mr. Leon Minkoff were there? A Sometimes both were there and sometimes just one; I don't remember which trip.

Q What did you do on this occasion? A We purchased whisky.

Q How much? A I guess about 25 cases.

Q Do you remember the brands? A I am not sure.

Q Do you know what was paid for it? A I am not sure of that.

Q Did you have any conversation with Mr. Minkoff, or did Mr. Hill have any conversation with Mr. Minkoff? A It was Mr. Huff.

Q Did he have any conversation with Mr. Minkoff in your presence? A Just talked.

Q Was anything said to Mr. Huff or to you about a telephone call at that time? A No, sir.

Q Anything said to Mr. Huff in your presence? A No, not in my presence.

Q Who paid for this whisky on this occasion? A Mr. Huff.

Q Do you know to whom he paid the money?
43 A One of the Minkoffs, whichever one was there; I am not positive which one.

Q At that time, do you know if Mr. Minkoff asked Mr. Huff for his name and address? A No, sir.

Q Do you know whether a bill of sale was given to Mr. Huff by Mr. Minkoff at that time? A No, sir.

Q These cases that you speak of, were they handled the same way that the other transactions were handled? A Yes, sir.

MR. PAYNE: Put in shopping bags in the same manner? A Yes. Sometimes we took canvas bags.

MR. WISE: Was one of the Minkoffs present at that time? A Yes, sir.

Q Did anyone assist you besides Mr. Huff? A I think the colored fellow was there.

Q En route on back home on this occasion anything unusual happen?

MR. DONOHUE: Object.

MR. PAYNE: Overruled.

WITNESS: Yes, we were stopped.

MR. WISE: All right. By whom and where? A By the State Patrol in Virginia.

Q What was done, if anything? A The car was confiscated; they took me down; Mr. Huff, he jumped out and ran; they took me down to the jail and bond was put up for me. I was released and went back for trial and paid a fine.

Q Following your arrest on this occasion and after you made bond, did you make a telephone call? A No, sir, I didn't.

MR. PAYNE: You didn't 'phone back to Mr. Mink-off's store and tell him that you had been caught? A

No, sir.

44 MR. WISE: Did you see Mr. Huff later on? A

Yes, I seen him.

Q Did Mr. Huff make a telephone call in your presence, and if so, to whom?

MR. DONOHUE: Object. The evidence shows that Mr. Huff ran away.

MR. WISE: It also shows that this witness saw Mr. Huff later on.

MR. DONOHUE: I don't know when it was.

MR. WISE: How soon after you made bond did you see Mr. Huff? A I don't remember how long it was. I was in jail four days before they released me; I don't remember.

MR. WISE: You may cross-examine.

MR. DONOHUE: I move to strike the testimony of this witness on the grounds that we were urged to be here by the Board upon the theory that the Board was informed that between November, 1947 and July, 1949 this respondent had made certain false and fraudulent entries in his business books and records and that there is not one scintilla of evidence in that regard in the testimony of this witness. I suggest, at this time, for the record, that it now becomes apparent that the purpose of this inquiry is not to inquire, as the Board stated in its letter, into the character of this respondent because it was informed that he made false and fraudulent records, or false and fraudulent entries in his records, but is an attempt by the Board, by a subterfuge, to try this respondent with respect to an alleged violation of the law, which occurred during a certain license year, the license year having expired.

MR. PAYNE: Motion denied. I will say to you, Mr. Donohue, that this Board does not indulge in subterfuge. The Board does not know what this is leading up to.

MR. DONOHUE: I stated that for the record and I think I have that right to so state, Mr. Chairman.

MR. PAYNE: The record will speak for itself.

45 *Cross-Examination of Walter J. Pridemore*

BY MR. DONOHUE: Mr. Pridemore, these shopping bags, you brought them yourself? A No, sir.

Q You brought the canvas bags? A On a couple of occasions we brought canvas bags; most of the time we used shopping bags.

Q Where did you get the shopping bags? A In the store.

Q You are sure of that? A I am pretty sure.

Q Where are you now living? A Knoxville, Tennessee.

Q How did you know that you were supposed to be here? A I received a subpoena.

Q You received a subpoena—from whom?

MR. PAYNE: The same letter and subpoena was sent to all the witnesses. Mr. Pridemore, you were sent the same letter and subpoena to two addresses? A Yes.

MR. DONOHUE: May I ask that the copy be of record? (Mr. Pridemore hands Mr. Donohue the letter.) Reading the first sentence of the first paragraph of that letter—"I am enclosing a subpoena which required your attendance before this Board"—did you believe, when you received this subpoena that it was mandatory for you to be here?

MR. WISE: I object.

MR. DONOHUE: I have a right to know what was in the witness' mind when he got this letter.

MR. PAYNE: You came here last night to appear before the Board in response to that summons?

MR. DONOHUE: I asked him if he believed, at the time he received this letter, if it was mandatory for him to appear here?

MR. WISE: I object.

MR. PAYNE: The Board has no objection to
46 him answering the question.

MR. DONOHUE: What did you believe? A I believed that you are supposed to appear.

Q When you got the letter, what did you do? A I didn't do anything—I read it.

Q With whom did you discuss it? A No one.

Q How did you come here this morning? A I got here by car last night. I left Knoxville by plane and went to Greensboro.

Q When did you get to Greensboro? A Yesterday afternoon.

Q With whom did you come from Greensboro? A Mr. Lisk.

Q Anybody else? A The other gentlemen.

Q What time did you see Mr. Lisk? A Yesterday afternoon.

Q When had you seen him last? A I was through there on my way to Fayetteville the week before.

Q Did you see Mr. Lisk at that time? A I stopped by and said hello.

Q Did you talk with him about this matter? A No.

Q Had you gotten the letter to come here then? A No, sir.

Q When did you arrange with Mr. Lisk to meet him in Greensboro? A I called him by long distance and told him that I had received the letter.

Q When you were in Greensboro yesterday afternoon with Mr. Lisk, did you talk to anybody else in Greensboro about this matter? A No, sir.

Q At some time or other, did you sign any
47 statement with respect to this case? A I think so.

Q When did you see that statement last? A This morning.

Q Who showed it to you this morning? A Mr. Wise.

Q What time was that? A That was approximately 10:00 or 10:15.

Q You read that statement this morning? A Yes, sir.

* * * *

48 MR. WISE: Do you have any objection, Mr. Donohue, with these going in?

MR. DONOHUE: No.

MR. WISE: Do you have any objection to the photostatic copies of the same going in?

MR. DONOHUE: No.

MR. WISE: I have here, also, if the Board please, a copy, certified by the Clerk of the Court, of the docket entries and the indictment in the case of the United States vs. Hyman J. Minkoff and Leon P. Minkoff, being Case #1262-50, Criminal, and I will ask if Mr. Donohue will agree to the admission of these without any further formal proof.

MR. DONOHUE: No objection.

MR. WISE: At this time then, if the Board please, I offer as Government's Exhibit #1 a copy, photostatic copy, of the records of the Department of Justice, showing the proposed offer of one thousand dollars in compromise of this criminal action, and the approval
49 of the same and the acceptance of the same by the Attorney General.

MR. DONOHUE: I have no objection to the offer of the documents for what they are. I do object to them as being what Mr. Wise has said they are.

MR. WISE: Did I say something wrong?

MR. MORAN: Don't the documents speak for themselves?

MR. DONOHUE: I don't object to the documents. I will object to what they are, or what they were stated to be later.

MR. WISE: Did I make a wrong statement? If so, I am sorry.

MR. DONOHUE: I concede their admissibility.

MR. PAYNE: Exhibit #1 so received.

MR. WISE: And, as Exhibit #2, the certified copy of the indictment and docket entries in this case.

MR. DONOHUE: No objection.

MR. PAYNE: So received.

* * * *

Direct Examination of Hubert Otis Short

BY MR. WISE:

Q Kindly state your full name? A Hubert Otis Short.

Q Where do you live, Mr. Short? A Greensboro, North Carolina.

Q Do you recognize the gentleman seated to the right of Mr. Donohue and to your immediate left? A Yes.

Q And who is he, sir? A Mr. Minkoff.

Q Do you know his full name, sir? A I know him.

50 Q Will you tell the Board, please, the circumstances under which you first met Mr. Minkoff, and give us the date, please? A Well, me and Leard come up here in July.

Q You say you and someone else? A Yes; Mr. Leard come up here in the last part of July.

Q Of what year? A Of '49, and purchased some whiskey from him, some liquor.

Q By "Mr. Leard" you mean who? What is his full name? A Leard, Junior.

MR. PAYNE: Mr. Lisk? A Mr. Lisk.

MR. WISE: You and he purchased some whisky from Mr. Minkoff in July, 1949? A Yes.

Q Now, will you tell the Board, please, from where

you came and the manner of transportation you used?

A We came from Greensboro. We drove a truck up here.

Q What kind of license plates did the truck have?

A North Carolina.

Q When you got here where did you see Mr. Minkoff?

A Over at the Acme Liquor Store, over on North—

Q Over on North Capitol Street? A Yes.

Q And was anyone else in the store employed there at the time you saw the gentleman you identify as Mr. Minkoff? A Yes, his brother. I think his name was Leon, something like that.

Q Leon Minkoff? A Yes.

Q And what did you purchase at that time, if anything? A Well, we, the truck belonged to Leard and we just come up here and I think he bought about twenty cases and I bought about twenty cases.

51 Q You each bought twenty cases. Do you remember, Mr. Short, what kind of liquor it was that you bought? A Well, I think most of it was Seagram's and a lot of it was Cream of Kentucky, and I think we had some, we bought some gin too.

Q You bought some gin? A Yes.

Q Does that also apply to Mr. Lisk's purchase? A Well, I think he bought mostly all Cream of Kentucky. I am not sure.

Q It was twenty cases each you purchased? A I think so.

Q At the time you purchased the whisky did Mr. Minkoff ask you for your name and address? A No, sir, I didn't—All I did was pay him for half for my part of it. We bought the liquor in Lisk's name.

Q You bought it in Lisk's name. Were you present when the money was paid to Mr. Minkoff by Lisk? A Yes. I paid for my part and he paid for his.

Q I see. And did you hear Mr. Minkoff ask Mr. Lisk

any questions about his name and address? A No, sir, because all that was—there wasn't much said there because he knew him. He knew him before.

Q Now, at that time was anything said by Mr. Minkoff about a telephone number? A Well, at that time I don't—we come up here and we run into a bad storm. It was on a Saturday and we didn't get here until twenty of twelve. We had to load and get out. We loaded. We were in a big hurry. I don't think anything was said.

Q How was this loaded? A It was in cases. We put it on the truck.

Q In cases. You put it on the truck, is that right?

A Yes, sir.

Q Was anything said on this occasion about the price of whisky? A Yes, sir. He told—We were talking and when we come up here Lisk told me that—

Q Not what Leard told you. I mean in Mr. Minkoff's presence. A Anyway the liquor cost us more that time than we thought it would cost us, and he told us—

Q Who is "he"? A Mr. Minkoff. He told us starting Monday, the first of the month, a new tax was coming on it and it would be higher.

Q On this occasion did Mr. Minkoff tell you anything in addition other than about the new tax coming on? A No, sir. We were in a hurry that night. We had come in late.

Q Did you have occasion to return to Washington? A Yes, I come up here; after that I come up here, I don't know, it was in October, I believe, and went over.

Q October of what year? A 1949.

Q And with whom did you come? A I came here by myself.

Q And how did you come? A In an automobile.

Q Did you at that time see Mr. Minkoff? A Yes, sir, I seen him.

Q And what did you do and where did you see Mr. Minkoff? A I seen him over the store, the Acme Liquor Store. I bought some liquor, I bought some cases. It was about twenty-five or twenty-eight, I don't remember how much I bought.

Q About twenty-eight cases, that is your best recollection? A Yes.

Q Do you know how much you paid for these cases? A Nine hundred and some dollars—I forget how much it was.

Q How was this liquor loaded? A Well, we had green bags, Army bags, and broke it down and put it in the bags.

Q Did someone help you? A Yes, sir, the nigger who worked in the store.

53 Q An employee of the store helped you? A Yes.

Q Some negro employee, is that right? A Yes.

Q Did you see Mr. Minkoff then when the whisky was being broken down and put in these bags? A Well, I come up here, and my mother lives up here, and I left the bags and ordered what I wanted and I went and ate supper and come back. I paid for it when I come back.

Q You paid him. You mean Mr. Minkoff? A Yes.

Q Did he at that time ask you for your name and address? A Yes. I didn't give my right name; I gave another name.

Q Did he give you a bill of sale for the merchandise? A Yes; he gave me a yellow sheet of paper.

Q At that time was anything said by Mr. Minkoff about a telephone number? A Yes. He told me if I got caught to call him back, if anything happened, collect.

Q Just try to remember, if you will please, Mr. Short, exactly what Mr. Minkoff said. I want this for the record. Will you repeat substantially, sir, just exactly what

Mr. Minkoff said to you at that time? A Well, he told me to call him back if anything happened and if I didn't, nothing happened, he wouldn't put it on the record or something, he wouldn't turn it in.

Q Did he say anything about who would pay for the telephone call? A Well, he told me to call him collect.

Q Did you ask him what he meant by not putting something on the record? A No, sir; I figured that wasn't none of my business.

54 Q He said nothing further as far as you can recall, is that right, sir? A It's been so long I don't remember what was said.

Q Did you have occasion to again return to Washington? A Yes. I come up here from then on.

Q Let's try to fix the dates, if we can, the year especially, and the months, if you can, sir. A Well, it was from November, the end of October to November, all of November, and December—I missed one week in there coming up here.

Q During what year? A 1949.

Q Every week. You came up once a week during that period of time with the exception of one week, is that right, sir? A Yes.

Q Now, tell me, please, if you will, what happened on the next time you came to Washington following the time about which you have testified, when Mr. Minkoff told you about the telephone call? Tell me first who, if anyone, was with you, the kind of vehicle, what kind of tags were on the car, and what was purchased, please. A Well, I had a '41 Buick, four door, and I run a Virginia license on it. I run it up with a North Carolina license and run it back with a Virginia license. From then on I was getting thirty-five to forty cases each trip.

Q Who paid for those thirty-five or forty cases each trip? A I did.

Q And do you recall—I am trying to be as specific about this as I can on each trip—Can you recall whether on the trip following the one about which you testified about the telephone call, whether you saw either Mr. Hyman Minkoff or Leon Minkoff on the premises? A Well, a couple of times I come up here he was't here, his brother was. I talked to him.

Q His brother was there? A Yes.

55 Q And can you tell us, please, the amount of merchandise you bought on that trip and how much you paid for it? A Well, I don't remember. I mean to say it was just some weeks I would buy more and some less. Usually I would get thirty-five cases and sometimes forty cases.

Q You know what I mean when I say five gallons of liquor? A Yes, sir.

Q If it is put up in fifth bottles that would be twenty-five fifth bottles, would it not, sir? A Yes.

Q Did you ever buy less than five gallons of liquor on any one of these trips? A No, sir.

Q Is it your testimony then that on each trip you purchased between thirty-five and forty cases? Is that what you testified to? A All but the first one because I didn't have enough money on the first trip.

Q Without going into too much repetition and detail, would you, can you tell the Board, please, the approximate number of trips you made altogether during the year 1949? A No, sir. I don't know how many trips I made. I made, I guess—well, I couldn't say, but I would say at least eight anyway—eight or nine.

Q At least eight or nine. Now, following this conversation that you speak of with Mr. Minkoff about the telephone call, on subsequent trips after that was anything further said about telephone calls? A No, sir, not that I know of; it might have been, but I just don't remember.

MR. MORAN: Going back to the number of trips you made to Washington, did I understand you to say you started to come up here regular in October, 1949? A Yes. We come up here in July, but then I didn't come back until October. I started coming back regular.

56 Q You came in October, November, and December, 1949. That would be about three months?

A The last part of October. I got caught in December in Reidsville, North Carolina.

Q Did you make a telephone call as a result of being caught? A No, sir. You see, I got caught about four o'clock in the morning and I didn't get out of jail until about seven o'clock. That same day I went to the hospital and had to have an operation. I was in the hospital about a week and a half. I didn't make a call.

Q What happened to it? Was it confiscated? A Yes; the forty cases.

Q The car too? A I got the car back. The car wasn't in my name.

Q Now, this week that you speak of in which you did not come to Washington and buy any whisky, will you tell us about that, please? A Well, my wife was in the hospital; she had a baby. I didn't come up here that week. I don't know whether it was him or his brother that called.

Q You say he or his brother. You mean Mr. Hyman Minkoff or Mr. Leon Minkoff? A Yes. I wasn't there. I was buying liquor in this other fellow's name and he called him.

MR. DONOHUE: I will have to object.

MR. WISE: Don't tell about the telephone call that someone told you was made to him by someone, but I want to know now about the call you started to testify about when I interrupted you. You say it was either Hyman Minkoff or Leon Minkoff. Do you know which one of the Minkoff's called you? A They didn't call me; they called this fellow.

MR. DONOHUE: I object.

MR. WISE: Not about calling someone else. Did there come a time, following information received by someone, that Mr. Minkoff called you on the telephone?

A I called him back.

57 Q You called him back. Proceed. You called him back. A I talked to him and he wanted to know why I didn't come up and I told him I couldn't make it because my wife was in the hospital.

MR. PAYNE: Which Mr. Minkoff was it that you phoned? A Mr. Hyman Minkoff.

MR. WISE: Following that telephone call you made to Mr. Minkoff, did you then go to Washington? A I went up there the next Monday. That was during the week, I don't know which day it was. I went up there the next Monday.

Q Tell me who you saw and what was said at that time? A Well, I just don't remember which one I seen. It's been so long.

Q By "which one" you mean someone in the store you saw? A I don't know whether it was him or—

Q You don't know if it was Hyman or Leon? A Yes.

Q You saw one of them? A Yes. Usually—

Q No; just your best recollection. You remember seeing one of them; you don't know which brother it was?

A That is right. I done more business with Leon than anybody else there.

Q Tell the Board what that conversation was between you and one of the Minkoff's that time? A They had called into Greensboro and knew it wasn't the name I gave them.

Q What name did you give? A J. T. Yow.

Q That is the name you gave when you purchased liquor? A Yes.

Q All right. A He told me he knew that wasn't my

name. He said, "I want your right name." I gave another name, but not my right name.

Q On that, let me understand this, when you
58 gave him this other name what other name did you
give him? A King—It was Jim King I gave him.

Q What did Mr. Minkoff say when you gave him the
name of Jim King? A Well, he said he knew that
wasn't my name. Then I went ahead and gave him my
telephone number at home. I still didn't give him my
name.

Q Did you at that time make a purchase? A Yes.

Q What did you purchase? A I don't know what
kind of liquor.

Q Not the kind. If it was liquor, what quantity was
purchased? A Well, I don't know—that is what I just
told you. I don't know at the time. I don't know how
much it was.

Q Was it less than five gallons or more than five gal-
lons? If you know. A It was more than five gallons.

Q How much more? A About one hundred and
twenty gallons, because that is what I got caught with.

MR. WISE: You may cross-examine.

Cross Examination of Hubert Otis Short

BY MR. DONOHUE: I move to strike the testimony
of this witness on the ground that we were informed by
this Board that we were here to answer to a charge that
we made certain false and fraudulent entries in the busi-
ness books and records, contrary to and in violation of
the law, but there has not been a single iota of testimony
from this witness which would tend to show that we made
any record, false or otherwise, as stated by the letter
received from this Board, calling the Board's attention
to the fact that it is the usual practice when someone is
charged with a violation of the law to inform him as to
the nature of the charge. Even before this Board a re-

spondent is entitled to the laws of the Constitution.
59 We came here in good faith, in the belief the Board meant what it said, and prepared to show the Board all pertinent matters kept in the books, as required by the Board. Yet, we have been called upon to listen to a series of loose and loud implications made by three apparent bootleggers. And since these allegations go back to 1947 and this is 1951, it is hardly fair to expect us to answer them. For that reason I move to strike the testimony of the witness.

MR. WISE: If this is not connected of course it will be stricken.

MR. PAYNE: Very well; the motion is denied.

MR. DONOHUE (To Witness): Just what is your name? A Hubert Otis Short.

Q Just when did you give anybody in the Minkoff store your home telephone number? A After—Well, my wife had the baby December 9th, so it must have been the 12th or 14th that I gave my telephone number.

Q 12th or 14th of November? A In December. I don't know for sure. She was in the hospital that week.

Q Don't you remember a few minutes ago testifying that after receiving a telephone call in North Carolina from one of the Minkoff's you came to Washington and had a conversation in the store with him in which he told you you didn't give your right name? A I didn't receive a call from him; I called him. Somebody from up here called down there and told this fellow to have me get in touch with these boys.

Q As a matter of fact Mr. Minkoff never called you in North Carolina? A He must have. I called back and somebody paid for the call here. I called the Acme Liquor Store.

Q Isn't it a fact Mr. Minkoff never called you in North Carolina? A No.

Q When did he call you? A He never called me.

60 Q When was the last time you were at this store? A Well, I got caught December 20th and it was December 19th when I bought the liquor. It was the same night but I got caught early in the morning.

Q What did you buy that day? A I had forty cases in the car.

Q Forty cases of what? A Liquor.

Q What kind? A Well, I don't know. Some of it was good liquor, some Bourbon, because it was Christmas and I was getting it for good customers.

Q What brands? A Seagram's, H & H.

Q How much Seagrams? A Well, I always bought more Seagram's than anything else.

Q How much did you get that night in December? A I would say right off at least twenty-five cases of Seagram's.

Q What else did you buy? A Some Schenley's.

Q How much? A I don't know for sure.

Q Your best recollection? A Three cases, I guess.

Q What else? A I bought some Cream of Kentucky.

Q How much? A Well, I don't know—three cases, I guess—something like that.

Q What else? A Case of H & H.

Q One case? A Yes.

61 Q What else? A Then I bought—I can't recall some of them. Anyway, I tell what I had in the car, thirty cases of fifths and ten cases of pints.

Q You can't remember the brands? A I didn't buy good liquor because you can't sell it there much.

Q How much did you pay for it? A Thirteen hundred and ninety-three dollars and some odd change for the liquor all told.

Q Did you get a slip for it? A Yes, a yellow slip like you have in your hand.

Q Is it like the slip? A Yes.

MR. DONOHUE: I would like that marked for Respondent's Identification #1.—When were you in there last before the 19th of December? A Well, that was on a Monday, the 19th was on Monday. I got caught Tuesday morning. It was a week from Monday, a week ago. It would be about the 14th or something like that.

Q Were you alone? A Yes. I come up here by myself all the time.

Q What did you buy on that occasion? A Like I told you I am not sure how much. I bought when I come up here all the time.

Q What is your best recollection? A Well, I would buy from thirty-five to forty cases every time I come up here, all but a couple times when I first started hauling it and didn't have enough money.

Q When were you here next before the 14th of December? A Two weeks previous, because my wife was in the hospital that week.

Q What is your best recollection of the date? A I don't know—around the 3rd of December—something like that.

62 Q What did you buy then? A Well, it's hard to tell you. I don't know.

Q When were you here next before the 3rd of December? A Well, I just told you I come every week from the last part of October until I got caught on the 20th of December.

Q Did you phone Mr. Minkoff when you were arrested the 19th of December? A No, sir, because I got arrested three or four o'clock in the morning and stayed in jail; then I had to go to the hospital to be operated on.

Q Never did call him? A No, sir. I stayed in the hospital about a week and a half.

MR. DONOHUE: No further questions.

MR. PAYNE: Mr. Wise?

MR. WISE: No questions.

MR. DONOHUE: I forgot to ask you—Did you receive a letter from the Chairman of this Board stating that you were required to be here today? A Yes, sir.

* * * *

63 *Direct Examination of Edward P. Gill*

BY MR. WISE:

Q Mr. Gill, will you kindly state your full name? A Edward P. Gill, GILL.

Q And where are you employed, sir? A Deputy Sheriff, Montgomery County, Maryland.

Q How long have you been so employed? A Since December 1, 1950.

Q Have you been retired recently from a Governmental position? A Yes, sir; June 30, 1950, I retired from the Alcohol Tax Unit after twenty-eight years as a special investigator.

Q Will you tell the Board, please, whether you are familiar with the form of the Bureau of Internal Revenue known as Form 52? A Yes, sir.

Q And will you tell the Board, please, what that form consists of?

MR. DONOHUE: I object to the question, if the Board please, because that is a matter of Federal Regulation which, I assume, this Board exercises no control.

MR. WISE: If the Board please, I want to say this—that this whole case, as will be seen, deals with this
64 Form 52, as well as other forms. I want this witness to explain to the Board just what the form is and what its purpose is.

MR. DONOHUE: I object to it on the ground it is not a form required to be kept by this Board; it is wholly in the jurisdiction of the Alcohol Tax Unit.

MR. PAYNE: Objection overruled.

MR. WISE: Proceed.

A The Form 52 record is an Internal Revenue record composed of book form, which is in front of Mr. Hyman Minkoff now. Half of the book is called 52(a) and the latter half 52(b). 52(a) shows receipt of all whisky by a wholesale liquor dealer, and 52(b) shows the disposal of that liquor of more than five gallons. On both forms it gives the name and address, the name brands of the spirits, the distillery of where it comes from, the amount, proof gallons, wine gallons, and the serial numbers of the cases.

Q If one purchases anything less than five gallons, that is, one person less than five wine gallons, does that transaction have to be shown on the Form 52? A It does not.

Q Under the existing regulations are licensees dealing in alcoholic beverages required to make reports of Form 52 to the Bureau of Internal Revenue? A Yes, sir.

Q And for licensees in the City of Washington to whom are such reports made? A District Supervisor, Baltimore, Maryland.

Q Are those reports in original form or duplicate form?

MR. DONOHUE: I object. The answer of these questions is contained in the statute and the regulations which are promulgated pursuant thereto. The best authority is the statute, not what someone says it is.

MR. PAYNE: Objection is overruled.

MR. WISE: Proceed.

A It is the original form that is submitted to
65 Baltimore, accompanied by a Form 338, which shows the recapitulation of the transactions, the amount on hand, the amount on the first of the month, the amount received, the amount disposed of, and the amount on hand at the end of the month. That is sworn to by the permitholder or licensee and submitted before the tenth of the following month. These entries on Form

52(a) and (b) are required to be made daily by the permittee or liquor dealer.

MR. PAYNE: These reports are required monthly?

A Yes, sir.

MR. WISE: Mr. Gill, in your capacity did you have occasion to examine the Forms 52 submitted by Hyman J. Minkoff, trading as Acme Supply Company, at premises 1400 North Capitol Street, N. W., for the period 1946 to 1950, inclusive? A I think, I believe—I am sure I have from July 1, 1947 to February, 1950.

Q And are you able to tell the Board whether you saw any reports made on Forms 52 by the licensee, Hyman J. Minkoff, of any sales during this period and to whom such sales were made? A Yes, sir.

Q What did those records disclose? A They disclosed on February 9, 1948, thirty cases of whisky were sold to a man named Huff. That entry happened to be reversed, (a) was put where (b) was and (b) where (a) was. It was put there in error. The only other entry was made or shown on the 52(b) record and was July 23, 1949, and following that date July 21, 1949, and following that date July 22, 1949. Those three entries were made under the name of Leard Evander Lisk, Junior, Greensboro, North Carolina.

Q Did that record show whether any sales were made by this licensee to a Mr. —

THE WITNESS: Hubert Otis Short.

Q Hubert Otis Short? A No, sir.

Q Or to Walter J. Pridemore? A No, sir.

66 MR. MORAN: Was there anyone by the name of King? A No, sir. No other record other than the ones I have just mentioned appeared on any 52(b) forms from that date I just stated, July, 1947 to February, 1950.

MR. WISE: Did the Minkoffs have a Federal Tax Stamp for 1948, 1949, and 1950, do you know? A Yes, sir.

Q And being holders of a tax stamp it would be necessary to make these entries? A Being qualified as a wholesale dealer, yes, sir.

MR. WISE: You may cross-examine.

Cross Examination of Edward P. Gill

BY MR. DONOHUE:

Q When did you examine the records? A In February, that last date, February, 1950 was the last time. In fact, I examined them a couple times prior; I went over them to make sure.

* * * *

Direct Examination of Herbert K. Schollenberger

BY MR. WISE:

Q Kindly state your full name? A Herbert K. Schollenberger.

Q Where are you employed? A Alcoholic Beverage Control Board.

Q In what capacity, sir? A Chief Inspector.

Q As Chief Inspector you have supervision over Inspectors of the Alcoholic Beverage Control Board? A I do.

67 Q You direct their activities? A Yes, sir.

Q And do you occasionally make inspections yourself, sir? A Yes, sir.

Q Will you tell the Board, please, with reference to Form 52, whether that form is a Federal form or not, as far as you know? A It is a Federal form.

Q And will you tell the Board, please, whether you and your inspectors, or whether you, yourself, in making inspections have occasion to use that form 52 with respect to your checks and investigations made? A All the inspectors, including myself, do examine that record as part of the record of the licensed premises.

Q I see. You may cross-examine.

MR. DONOHUE: I have no questions.

* * * *

Direct Examination of Richard C. Sullivan

BY MR. WISE:

Q Kindly state your full name. A Richard C. Sullivan.

Q Where are you employed? A Alcoholic Beverage Control Board.

Q In what capacity? A Assistant Chief Inspector.

Q How long have you been so employed? A As Assistant Chief Inspector about six years.

Q Did you have occasion to examine the books and records of Hyman J. Minkoff, trading as Acme Supply Company, at premises 1400 North Capitol Street? A Yes, sir.

68 Q Will you tell the Board, please, when that examination was made? A July 26, 1949.

Q And will you tell me, please, whether during that examination you made an inspection of the licensee's form book #52? A 52(b), yes.

Q 52(b). Is that the one that shows income or outgo? A Outgo.

Q That shows where sales are made, is that right, sir? A That is right.

Q Now, over what period of time, Mr. Sullivan, did you make this examination for? A I checked the book back until December, 1948, and there was one entry July 23, 1949.

Q And what was that entry? A That entry was for about twenty-two cases of whisky and gin going to Greensboro, North Carolina.

Q To whom was it consigned? A A man by the name of Lisk—LISK.

Q And did you see any entries of sales made to Hubert Otis Short? A No, sir.

Q Did you see any sales in that book 52(b) to Willard L. Huff? A No, sir.

Q And did you see any sales in that book 52(b) recorded to William J. Pridemore? A No, sir.

Q Did you have a conversation with the licensee at the time you made this examination? A Yes, sir.

Q With whom did you talk, with which one? I understand it is a partnership. With which one of the partners did you talk? A I talked to Leon, he was there.

Q Do you recognize the gentleman seated to
69 the right of Mr. Donohue? A Mr. Minkoff, yes, sir.

Q Was he on the premises at that time? A A little later he came in.

MR. PAYNE: During the conversation? A Yes.

MR. WISE: What was the conversation? A It was in reference to any large quantities that had been sold and anyone who might come in and ask for large quantities, and, if my memory serves right, something was said that he didn't have large quantities or sales.

Q They had no large sales? A I think that is what it was.

MR. MORAN: Any indication what a large quantity was? A Well, more than five gallons, that would have to be entered in the 52(b) book under Federal law.

MR. WISE: You may cross-examine.

MR. DONOHUE: I have no questions.

70 MR. DONOHUE: I am in a very uncomfortable position because I have been repeatedly told that this is not a citation. We are here, according to the terms of a letter, for the purpose of inquiry into our character. This, in spite of the fact that with one excep-
71 tion, all the evidence has been offered to show, I take it by the testimony of these three incredible North Carolina bootleggers, and I take it from the evidence that that is what they are, the sales of alcoholic beverages, on their uncorroborated statements, by the re-

spondent. And while seriously and rather severely rebuked by the Chairman when I made the suggestion for the record that the inquiry into the character of this respondent, as evidenced by the letter, was, in fact, being employed for the purpose of a trial on an alleged violation of the law for licensed years past before the existent license year, some credence to that fact, at least, is given by the closing remark of Mr. Wise, which I am sure the record will disclose, when he said that he closed the Government's case. Well, if this is a case, I move to dismiss it. If it is not a case and if it is what the Board's letter said, an inquiry into the character of this respondent, then I am prepared to proceed.

MR. WISE: Of course, if the Board please, if I might answer Mr. Donohue, in every one of these cases the public has an interest. I am here as a representative of the people of the District of Columbia, and the people of the District of Columbia are interested in all of these cases, whether they be citations against existing licensees or whether there is a license application pending, and the Government has information about certain practices of an applicant, which have arisen during a licensed year, which, had he been convicted of during the licensed year, would have subjected his license to either a suspension or revocation. In this case there was no conviction because of the settlement by him at the Department of Justice, following which the indictment was dismissed. Now, if Mr. Donohue can say that the public has no interest in that sort of a case and that sort of a licensee, and if he can say the Government has no interest whatever in this case, I might as well say that the Government has no interest in anything that goes on, I don't care whether it be a citation or an application for a license. The Government can certainly step in here and show to the Board why a certain license cannot be granted and should not be granted. That is what the Government is attempting to do.

MR. DONOHUE: If we were here on a citation, we would know what we are charged with. I think that is only fair in the due process of law. We do not know and as far as the interest of the public is concerned, I think I am just as public spirited as Mr. Wise, and to refute the suggestion I made when I read to the Board a long list of persons indicted for this same offense, well, Mr. Wise said the Board probably didn't know about that. So I refer the Board to its own file, which is marked "File #596, 1945," in which there appears a letter, or a copy of a letter, under date of April 3, 1945, over the signature of Mrs. Mason as a member of this Board, the letter being addressed to The Honorable Edward M. Curran, U. S. Attorney—"Dear Sir: The records of this Board reveal there is an indictment pending on each of the following:

Ben Rose	Max Miller & Myer C. Blank
Morris Miller	Maurice Milstone
Morris Berger	Dorothy Weinstein
Ney Distributing Company	Lawrence Goldberg
Solomon Bane	Sam Eig
Harry Siegal	Clark's, Inc."

and attached to this copy of the letter is an affidavit, which was signed by Morris Berger on the 18th day of January, 1945, which, I think, is what the Board understands as a waiver, by the terms of which the applicant concedes, or agrees, that if a new license is issued, any violation which he may have committed prior to the issuance of the current license, may be prosecuted against the new license, and, I think if you will examine your records further, you will find while this was done with each of the persons who was indicted, as this man was indicted, no prosecution or citation was ever had, and I was informed not later than this noon today that he forfeited \$3,000, and, as I said to the Board this morning, I think there was one instance in which the amount of

money forfeited for the violation of the same statute was \$10,000. Now the fact remains that this Board issued this licensee a license on the first day of February, 1950, and there has not been one scintilla of testimony or evidence that at any time during the current license year, from Feb. 1, 1950, until this moment, that this respondent has in any manner or to any degree of suspicion violated the law. Now, what do you have? You have introduced as evidence an indictment, an indictment under the same statute as resulted in the indictment of that list of persons and a corporation, which I read just a moment ago. Attached to this indictment 73 is a transcript of the record from the Criminal court, under date of November 7, governmental motion for leave to dismiss granted, dismissal entered, defendant discharged. Now, this respondent was indicted; had he been convicted of that indictment, there is no question as to what the Board's responsibility would have been, but the fact remains that the indictment was dismissed on motion made by the United States Attorney, and for some reason, which I don't understand, maybe just because it is pretty, you have introduced, as Government's Exhibit #3, a transcript of what happened on the morning this case was dismissed by the United States Government, it having been dismissed upon motion of the Assistant U. S. Attorney by The Honorable Edward A. Tamm. And all this important document says is, and I quote: "MR. ARNOLD (Assistant U. S. Attorney)—In Criminal 1262-50, Minkoff, Hyman J. and Leon P., which is on Your Honor's calendar for tomorrow, this is a case, Mr. Conliff's case, a tax case, and there has been a compromise approved by the Department of Justice, and the dismissal authorized, and I now move that leave be granted to dismiss this case at this time. THE COURT: Leave to dismiss is granted." Now, you have introduced, as Government's Exhibit #1, an interesting pair of documents. Let me read #1, under date of October 12, 1950,

addressed to George Morris Fay, Esq., United States Attorney, District of Columbia: "Dear Sir: On behalf of the defendants, Hyman J. Minkoff and Leon P. Minkoff, in the above-entitled case, I enclose herewith a certified check in the amount of \$1000.00 payable to The Treasurer of the United States, and offer same in compromise of the alleged violations of 26 U.S.C. 2857(a) as set forth in the indictment now pending in the United States District Court for the District of Columbia. The defendants operate the Acme Liquor Supply Company at 1400 North Capitol Street, Washington, D. C., a duly licensed wholesale dealer, of which Hyman J. Minkoff is the owner and Leon P. Minkoff the manager. The charge does not involve any failure or avoidance of any taxes and the defendants have paid all taxes due from them. The charges constitute a technical violation of the law and I submit are of a civil nature rather than criminal.

Pursuant to the pertinent provisions of the Code
 74 I offer herewith \$1000.00 as a civil payment in compromise of the criminal action, and request that the same be accepted in full satisfaction of the technical violation of the law and that the indictment be dismissed." The letter is signed by James E. Markham. We have then accompanying this document some kind of an entry, photostated, from the Criminal Division of the Department of Justice, which seems to be addressed to the Assistant Attorney General—"Sir: There is transmitted herewith the offer of compromise in the following case and I ask that the offer be accepted in accordance with the recommendation contained in the attached brief." The acquiescence in that offer is evidenced by the signature of the Assistant Attorney General. So what does the record show? The record shows that he was indicted for a technical violation of the law. This man has been convicted of no offense. A thousand dollar civil compromise was accepted by the U. S. Government, and he stands today, as he has from the day he was born, as a

man who has never been convicted of any offense. We came here today perfectly willing to offer to the Board the witness' own testimony as to his background and character. It is a strange circumstance to me that this respondent, who has held a license, and you must take judicial cognizance of your own records, this man has held a license since 1937—for 13 years, and during the 13 years he has held a license he has never violated any law of the District of Columbia, or of the United States; he has never been cited before this Board for any conduct which could be construed as a violation.

MR. WISE: Is this a motion to dismiss or is it a confession of avoidance. A motion to dismiss goes only to the prima facie case, and it either stands or falls at the close of the Government's last witness. Now, if you are going beyond that and talking about the good character of the applicant here, or respondent here, then I think that you can do that only on a plea of confession and avoidance.

MR. DONOHUE: You misunderstand me. I am arguing the good character of this respondent from the evidence before this Board. I cannot see why this respondent, who for 13 years by the records of this Board has had a license without a blemish upon it, was not
75 given the same consideration as the other respondents whose names I mentioned at some length, and the letter addressed to The Honorable Edward M. Curran by Mrs. Mason, and allowed to sign a waiver if you wanted to induce charges against him. Why has he been selected for this unusual procedure, and that is a part of my motion to dismiss.

MR. WISE: If the Board please, I don't quite understand Mr. Donohue. If this be a motion to dismiss, as he has stated repeatedly, then a motion to dismiss goes only to the prima facie case. A motion to dismiss admits the allegations that are well pleaded and says that admitting everything that is well pleaded, we say that

the Government does not have a case. That is my understanding of a motion to dismiss. When we go beyond that then it becomes something other than a motion to dismiss. So I am frank to say I don't know just how to attack it. I say here that Mr. Donohue should say, should point out, point by point, where the Government does not have a prima facie case. Where he admits everything that is well pleaded to be a fact and says admitting all of this, we say there is no case, as a matter of law, that is a motion to dismiss. But now Mr. Donohue comes in and shows to the Board other cases where indictments were nolle prossed against other licensees—does Mr. Donohue mean to tell this Board that because the United States Attorney nolle prossed one case for robbery that he cannot thereafter prosecute another case for robbery—does that tie his hands, does that become a precedent, or does he mean to say that because one case of the same character is dismissed, the Government cannot go ahead and prosecute another case of the same character. I don't know that Mr. Donohue can tell us what the facts are; but certainly the Board has a right to ignore certain allegations if it wishes to, or certain alleged violations, and has a right to listen to prosecution of other cases of the same type. The fact that these other cases might have been nolle prossed, assuming they are under the same Act of Congress, does not mean that other cases of like import cannot be prosecuted. As long as the Congress sees fit to keep the law on the books, the case is subject to prosecution. Now, with respect to

this Board, this Board has called this licensee in
 76 under Section 14 (a-1) of the Act to show to the

Board that he is a person of good moral character to receive this new license for which he has applied effective February 1. As I have indicated, this Board cannot be arbitrary and capricious and refuse to issue this license because it does not like the way he parts his hair or wears his necktie. I am sure that no court will disturb the

Board's judgment and substitute its own judgment instead. The only thing I can say to the Board is—does the Board have substantial evidence before it to satisfy itself that this man is not a good person to issue a license to. If the Board is satisfied, and no one need be satisfied except this Board, that this man should not be issued this license, then that ends it.

MR. DONOHUE: The cat is now out of the bag. I don't know who is going to bell the cat. Mr. Wise has repeatedly referred and characterized this, as I was afraid it was, as the prosecution of a case. If we are to be prosecuted, we are entitled to be cited under the statute; we are entitled to our statutory right to appeal and that cannot be denied us. As far as the question of the Board ignoring a violation of the law on the part of one licensee and taking cognizance on the part of another licensee, let me say this, that if this Board, if this respondent is denied a license because of this technical violation of the law, which was settled by a civil compromise of \$1000.00, and is not fit to have a license because he is of not good moral character, then I say to the Board the same is true of the persons whom you ignored in 1945, as evidenced by the records of this Board where you were cognizant of the violations of the law and did nothing about it.

MR. PAYNE: I would say at this time, gentlemen, that I think that the motion to dismiss is not plain here. This is not a citation hearing. The purpose of this hearing, I would say again, is to give this applicant for a license the opportunity to show that he is a proper person to have a license, so as to satisfy the Board under the requirements of Section 14 that he is such a proper person, there having been certain presentations made to the Board.

* * * *

BY MR. DONOHUE:

Q Mr. Minkoff, where were you born? A Washington, D. C.

Q How old are you now? A Thirty-eight.

Q Have you lived in Washington all your life? A All my life.

Q What was the extent of your schooling? A Third year at George Washington University.

Q Following your schooling at the University, what became your occupation? A The liquor industry.

Q What was your first employment? A A clerk at Lord's Liquor Store.

Q How long did you work as a clerk for Lord's Liquor Store? A About 14 months.

Q What was your next employment? A Salesman at the Shoreham Coffee Shop.

Q How long did you work there? A Eight months.

Q Did there come a time when you acquired a liquor license? A Yes, I purchased the Acme Supply Company.

Q Located where? A 1400 North Capitol.

Q Where was it located when you first acquired it? A 1338 North Capitol Street.

MR. PAYNE: When did you acquire the license? A I think in 1937, December the 23rd.

MR. DONOHUE: You have had a license continuously at the two addresses on North Capitol Street since 1937?

A Yes, sir.

78 Q As of this moment, have you ever been cited before the A.B.C. Board for any violation of the law? A No, sir.

Q Have you ever been convicted for any offense in the District of Columbia? A No, sir.

Q Are you married or single? A Married.

Q Do you have a family? A I have two children.

Q What is your appraisal of the value of that business of yours? A Well, as it stands I would say roughly around \$75,000.

Q Mr. Minkoff, you were indicted for a failure to record in your book a sale on the 19th day of November, 1947, reading from the first count of the indictment, the date on which I think your first witness said he made a purchase. The indictment charges that the defendant willfully refused to make an entry on that date. What does your book show? A 11/19/47, Evander Lisk, Greensboro, North Carolina, there is a sale of a total of 32 cases.

MR. DONOHUE: Now, I offer in evidence the original book, having in mind that the indictment charges that this man made no record of a sale made on the 19th day of November, 1947. There is the original book and there is the record.

(Mr. Wise looks at the record.)

MR. PAYNE: Is that the original record?

MR. DONOHUE: No, this is a duplicate, the original is sent to the tax office.

MR. PAYNE: Mr. Minkoff, for the clarification of the Board, can we see this book? A Yes, sir. (Mr. Minkoff gives the book to the Board.)

MR. PAYNE: On November 12, 1947, you have here in the first column "Acme Supply Company," in the second column your address and following that for several days entries, then the two entries in the name of 79 Evander Lisk and then the following column there is no name.

MR. MINKOFF: Mr. Payne, that is where it should have started over again—Acme Liquor Supply.

MR. PAYNE: On this line where he says Evander Lisk, it should have said Acme Liquor Supply. That shows where you have taken it out of your stock?

MR. MINKOFF: You take it out of the retail department and put it into the wholesale department before you can make a wholesale sale.

Q In other words, while there may not be a physical transfer of bottles from here to there, it's done on the book from the retail department to the wholesale department? A Yes.

Q I will ask you, Mr. Minkoff, when that record of the sales to Evander Lisk, as of November 19, 1947, were recorded in that book? A As of that day.

Q But on what day was that entry made? A November 19, 1947.

Q What is there to indicate that? A Well, above the date 11/19/47—this is the report for the month of November, 1947.

MR. DONOHUE: That book is kept chronologically, is that right, Mr. Minkoff? A Yes, sir.

MR. DONOHUE: Will you refer to July, 1949? Now, if the Board pleases, the second count of this indictment charged that on the 21st of July, 1949, this respondent entered alcoholic beverages as having been sold in the quantity of 74 cases to Evander Lisk, Jr., and the third count of the indictment charges that on the following day, the 22nd of July, 1949, that this respondent entered in his books the sale of 116 cases of whisky to Evander Lisk, which Lisk did not obtain. These, I take it, are the 200 cases of whisky he was charged for and never got. Now, will you explain the entries on your Form 52-B?

(The Board looks at the book.)

80 MR. DONOHUE: While we are talking about this indictment, in order to give emphasis to it, I would like the Board to take cognizance of the fact, from the exhibit of Mr. Wise, that this man was indicted in August of 1950. It has been a matter of public record ever since then.

MR. MINKOFF: I entered that sale as you can see and I omitted—there was a clerk who was keeping the incoming bills from the wholesalers and somehow he got behind—I entered that sale—then the same thing takes place, instead of him starting under the end of that sale

—in fact, he put a mark there, that is supposed to indicate a parenthesis, that is where they charged that sale. The sale was on the 23rd; it was entered on the 23rd—you can see my own handwriting where I entered the sale myself. That is what happened there.

MR. MORAN: I notice an entry on the 21st, then there is a 23rd entry, another 23rd entry, then another 21st entry?

MR. MINKOFF: This to this here, the 23rd, that sale I think goes right there and then you will notice the handwriting changes, that was a clerk that was working for me, who kept this up. He did get behind a few days. When I made this sale it was on the 23rd and I entered it then.

MR. MORAN: What do you mean by these marks? A They are supposed to be parentheses marks, but I entered that and that is my writing, that line there, you can see where it changes, the rest of the book, except the wholesale entries, were put in in his handwriting, as he kept track of incoming merchandise.

MR. PAYNE: Very well, we will continue.

MR. DONOHUE: Now, I would like to say that that constituted the indictment alleged in the first instance, for failure to make a record of a sale on November 19 in that book, that precise book, and you can see by the continuity of the calendar it was obviously made at that time; and with respect to the counts two and three, the entry of the sale of cases of whisky, he has explained to you it was a failure to re-write the words "Acme Supply Company," when he transferred his retail to his wholesale. I would say any jury that would examine that

81 book would see the difference in the handwriting.

His clerk made the records of the transfers from retail to wholesale and he made all the wholesale sales. Now, let me ask you, Mr. Minkoff, is that the kind of slip you have used over the past few years? A Yes, sir.

MR. DONOHUE: I would like to offer this in evidence. I wanted him further to identify it. I offer it for the purpose of showing very prominently on this bill, which they say they got, the man's telephone number. The number is right there on the slip.

MR. WISE: If the Board please, of course, I don't know when the telephone number was put on this slip. The witness said that this yellow slip is similar to the one that was handed to me. He was not asked anything about the telephone number. It may have been or it may not have been on there.

MR. DONOHUE: Let me ask you, Mr. Minkoff, was the 'phone number on there? A Yes, sir. I have had bills for the last 13 years and they have all had the telephone number on them.

MR. DONOHUE: Will you turn to the entry of February 9, 1948, the entry testified to by Mr. Gill? (Mr. Minkoff refers to the book.) Will you tell us about that sale? A Louis W. Huff, 447 Grell Street, Greensboro, North Carolina. I am sorry, I cannot recall the sale at all.

Q Did you recognize any one of those bootleggers who testified here today as having been in your store?

MR. WISE: If the Board please, Mr. Donohue has repeatedly used the word, "bootlegger." Let's call them "witness."

MR. DONOHUE: I will call them what they said they are. A bootlegger buys whisky for resale for his own profit and that is what they were doing when they were arrested by the police.

MR. PAYNE: I don't think we should limit Mr. Donohue in his use of the word.

MR. DONOHUE: Did you recognize any one
82 of those gentlemen, and I do not include in that the distinguished gentleman who was the Sheriff of Prince George's County. Did you recognize any of those

other gentlemen as being represented by that name "Huff"? A I cannot.

Q There are no other wholesale sales in that book?

A I think there are other wholesale sales—February 13, Leonard Sykes, for instance.

MR. WISE: What year? A 1948, Greensboro, North Carolina, 35 cases.

MR. DONOHUE: Can you recall that person? A Yes.

Q He was not here today? A No.

MR. PAYNE: Did Mr. Sykes get 35 cases of miscellaneous beverages? A 35 cases of Seagrams.

MR. DONOHUE: Do you recall this first gentleman who testified, named Lisk? A Yes, sir.

Q Is he the same person whose sales you have indicated as being taken on November 19? A That is correct.

Q Did you ever make him any other sales in your place of business? A No, sir.

Q Did you call him or call anybody in North Carolina in reference to him? A No, sir.

Q Did he ever call you? A No.

Q You heard that gentleman testify that when he bought these cases of whisky that you told him, in the event he got picked up, to call you on the telephone, reverse the charges, and you would then make the entry in the book? A I had no such arrangement with anybody.

83 Q Did you ever have any such conversation? A No, sir, I did not.

Q You heard two other of those gentlemen from North Carolina, one by the way of Tennessee, testify that they had been in your store as often as once a week, averaging the purchase of 40 cases of whisky. Do you find any record of any such sales to them in your book? A No, sir.

Q Did you make any such sales? A Not that I recall.

Q Do you recall any of these people other than Mr. Lisk? A I don't. In fact, when I walked in here I pointed to this one and I said, "Are you Lisk?"

Q Was it? A Yes.

Q Do you know either of the other two? A I have seen them come in with him.

Q How many times has Lisk been in your place to purchase whisky? A Three times.

Q Three times altogether? A He was there once or twice just talking prices, but I didn't sell him anything.

MR. PAYNE: Then do I understand this man, Lisk, was in the store to make purchases three times? A That is right, he made three purchases.

Q The other times he was in, he was only asking about prices? A That is right.

Q Now, subsequent to your indictment you employed counsel? A Yes.

Q I think the record shows, as introduced by Mr. Wise, that this was a distinguished member of the Bar named James E. Markham. Did you or Mr. Markham arrange this compromise with the Department of Justice? A Mr. Markham.

MR. DONOHUE: (To Mr. Wise) You may have the witness.

* * * *

86 MR. WISE: Mr. Minkoff, Mr. Markham paid one thousand dollars of the money you gave him to settle this criminal case, did he not?

MR. DONOHUE: I object. He wouldn't know why Mr. Markham did it. You asked if Mr. Markham paid it for a certain purpose. How would he know? He is in the hands of his lawyer. Mr. Markham has stated why.

MR. PAYNE: Mr. Minkoff, did you give your attorney, Mr. Markham, a certified check in the amount of

one thousand dollars to be used in that case? A Yes, I did.

Q To be used for what purpose—what was your understanding? A To settle the case.

Q What case? A Well, the case I was indicted for, but under civil action. In that letter Mr. Markham said if they will drop the criminal action we find fit to drop the civil case and we are offering one thousand dollars in civil compromise. That was my belief—it was a civil case and not criminal.

* * * *

SS MR. WISE: Why did you pay one thousand dollars in settlement of this criminal prosecution?

A On advice of counsel.

MR. DONOHUE: I object to the question or answer "on advice of counsel."

MR. PAYNE: Was that your answer? A Yes; I just gave it before.

MR. PAYNE: You paid the thousand dollars only because the attorney, Mr. Markham, said pay the thousand dollars?

MR. DONOHUE: Mr. Payne, that may sound unusual, but sometimes clients have great faith in their lawyers.

MR. WISE: You knew you were under indictment in the District Court? A Yes.

Q And you knew you had to employ Mr. Markham to represent you in that case? A I didn't employ him to represent me in a criminal proceeding. He made the offer and compromise and I employed him for that.

MR. MORAN: Who represented you in the criminal proceedings?

MR. WISE: I am going to come to that. I have no objection to your asking the question, Mr. Moran.

THE WITNESS: Mr. Ford.

MR. WISE: Mr. Charles E. Ford and Mr. Allder represented you, is that right?

MR. DONOHUE: Yes—criminal lawyers.

MR. WISE: You were placed under five hundred dollars bond? A Yes.

Q Now, you made bond on August 15, 1950, did you not? A I don't remember the date.

Q On October 12, 1950 you handed Mr. Markham one thousand dollars, did you not? A I don't recall the dates. If you want me to check back the day I wrote the check I can find out.

89 Q Was Mr. Markham representing you in any other case other than this case? A No.

Q You had no other case in which Mr. Markham was representing you?

MR. DONOHUE: That is not fair. He said he employed Mr. Markham to make this civil compromise.

MR. WISE: A man may have a thousand lawyers if he chooses.—Was Mr. Markham representing you in any other case at that time? A No. As I wanted to explain, I originally employed Mr. Ford—I don't know about Mr. Alder—and then they were dismissed and Mr. Markham was representing me.

MR. PAYNE: You retained Mr. Markham? A Yes.

MR. WISE: When were Mr. Ford and Mr. Alder dismissed by you? A I don't recall the date.

Q Was it after you had given the one thousand dollar check to Mr. Markham to compromise this obligation? A Well, I don't know—it was before. In other words, I told Mr. Ford that we weren't going to trial with the thing and we decided to settle.

Q Now, you had already employed Mr. Markham to go to the Department of Justice, isn't that right, sir? A Not until after I talked to Mr. Ford.

Q And you employed Mr. Markham for the purpose of going to the Internal Revenue and Department of Justice, and he was representing you? A Not for this sole purpose. He could represent me in any case. I thought it a wise move to change.

Q So if the Attorney General refused your offer in settlement then Mr. Markham was going ahead and represent you in the criminal case? A He was to represent me—in what case I can't say. He was representing me after I dismissed Mr. Ford.

90 Q What did you think you were paying this one thousand dollars for?

MR. DONOHUE: Object.

THE WITNESS: I answered the question a few minutes ago. In settlement.

MR. DONOHUE: It is repetitious.

MR. PAYNE: I want to hear it.

THE WITNESS: I said that it was in payment of the civil suit.

MR. PAYNE: What civil suit? A Of which we had been indicted for.

MR. WISE: Had you ever been served with any civil papers in the case?

MR. DONOHUE: I object. It is not necessary. He is not a lawyer.

THE WITNESS: I don't think I was served with any papers.

MR. WISE: You were served with a warrant of arrest. You knew a warrant was out for you following the indictment by the Grand Jury? A No.

Q Who told you about it then? A Newspapers.

Q And in order to avoid the issuance of a warrant of arrest you went out and employed counsel?

MR. DONOHUE: I object. It is irrelative, irrelevant, immaterial, and bears no interest here.

MR. PAYNE: Objection overruled.

MR. WISE: After you learned about the indictment in the newspapers you employed counsel; that is correct, isn't it? A It is usual isn't it?

MR. WISE: Don't argue with me. After you learned you were indicted you employed Mr. Ford or Mr. Allder, is that right? A Yes.

Q And it was they who arranged to make bond so that that obviated the necessity of the issuance of a warrant of arrest, is that right? A Am I answering?
91 ing?

MR. PAYNE: He is asking. Is that right? A Yes, that is right.

MR. WISE: I am sorry you don't like the questions I put to you. I don't dislike you. I am trying to try a case.

MR. DONOHUE: That is what it is, a case.

MR. WISE: Certainly it is a case. I am trying to elicit from you certain information, if you don't mind. Now, sir, this book that you have in front of you that was just introduced by Mr. Donohue and about which you have just testified, what do you call that book? A 52(a) and 52(b).

Q Now, accompanying that book is a form known as Form 338? A I don't recall the number.

Q They are the pages which are the original pages and which are extracted from that book and sent to the Bureau of Internal Revenue Office in Baltimore by you pursuant to instructions? A That is right.

Q And then accompanying that form you swear to another form which is appended to another sheet? A That is right.

Q Now, is it your testimony that if an examination is made of these records between now and ten o'clock tomorrow morning that there will be no difference between the original signed sheet which you sent to Baltimore with the attached form, with the oath attached, that it would be identically the same? A As far as I possibly can, I have no knowledge of it being changed if a copy was taken off of this and sent in. After all you are going back a few years. I swear as far as I have any knowledge of it that that report and the top sheet were the same as this sheet.

Q You heard Mr. Gill testify? A Yes.

* * * *

93 MR. WISE: How do you know, sir, when you didn't keep these records, unless you were in the store at all times, whether any sales were made to either Mr. Pridemore or Mr. Short? A Truthfully, I could not say. I mean, as a rule, everything that is done is reported to me. You asked me if I supervised—yes, I supervise, but I also lost a large sum of money and it was taken from me by the help.

Q Are you in the store all the time while Mr. Leon Minkoff is there? A No, sir.

Q Do you recall whether you were in the store at all times during 1949? A Definitely not.

Q Would the entry of July 23, 1949, made by you in your own handwriting, and the other entries in the handwriting of your clerk, indicate anything to you about your absence or presence in the store? A No, that would have nothing to do with my absence or presence in the store.

Q Have you examined these forms 52 A and B, your duplicate copies, to see whether any sales were recorded to either Mr. Pridemore or Mr. Short? A No, I have not.

Q Why do you say, sir, under oath, that no sales were recorded then? A You asked me if I made any sales and I said, "No."

Q I will ask you to examine these and tell the Board whether your store made any sales, or recorded any sales, to either Mr. Pridemore or Mr. Short during the period covered by those Forms 52? A Don't you think it would take a little while to examine them for three years?

MR. WISE: Take your time; we have ages and
94 ages.

MR. MINKOFF: I don't have the other set of books here. If you will give a particular month, it would help. (Mr. Minkoff looks through the Forms.)

MR. WISE: Having examined those records, have you noticed any recorded sales to either Mr. Pridemore or Mr. Short? A No, sir.

MR. WISE: I have here, if the Board please, and which I would like to show the witness, the originals of all of his Forms 52 A and B. Mr. Minkoff, I show you your original returns of Form 52 A and B from the month of July, 1947, to December, 1950, and I will ask you if you will examine those and tell the Board please, whether you see any sales recorded to either Mr. Pridemore or Mr. Short? (Mr. Minkoff looks through the Forms.)

MR. MINKOFF: May I ask you a question? Mr. Pridemore and Mr. Short, whatever their names are, are they mentioned in the indictment?

MR. PAYNE: I don't think that has anything to do with the question. (Mr. Minkoff continues to look through the Forms.)

MR. MINKOFF: No, sir, I don't see any sales to these two men.

MR. WISE: Referring now to Government's Exhibit #4, Mr. Minkoff, will you tell me, please, just how these entries are made, assuming I come in and order 100 cases of whisky, certain brands, and pay for it, and you or Mr. Leon Minkoff makes the sale, what do you do then, do you then stand over your clerk and dictate to him the brands, the amounts, etc.? A No, sir.

Q What happens? A When the sale is made, a wholesale sale, by any employee of the store, he is required to make out a bill for that sale, with the name, address, serial numbers, etc. The bill is put with the orders in the back. In some cases we get very busy and this bill is put on the desk and when I get a chance I enter it. When a bill comes in from a wholesaler you put it on the desk, you cannot stop to put it in the book.

sometimes we have to wait until after we close, sometimes it is done the next morning.

95 Q That is exactly what I was getting at a little while ago. I asked you if there was any other record kept in addition to these forms 52 A and B from which a transcription was made and from which these forms were compiled. I understood you to answer that there was no other record in the office? A I said there was no other record in the office. These sales were made some time ago. We keep them for thirty days. If there is any information on them that I want, I usually know within thirty days, and after that we destroy them.

MR. DONOHUE: You are talking about sales slips?

MR. WISE: That is what I was trying to get at a little while ago—a cash book or anything else, from which this information is transcribed to these sheets.

MR. MORAN: You are not required to keep those sales slips on hand? A That is correct, just so you make the entry.

MR. PAYNE: Is there any requirement by the A.T.U. that limits the time within which these entries must be made? A I think it is 24 hours; I am not sure.

MR. PAYNE: That is my understanding of it.

MR. WISE: You have heard the character witnesses testify in this case, Mr. Minkoff and you heard at least one of them say that you told him that this indictment resulted from a bookkeeping error. Remember that, sir?

A No.

Q Do you deny that you said that? A That I told him it came from a bookkeeping error?

MR. WISE: Yes, sir.

MR. MINKOFF: I don't know if I told him or not; I cannot answer the question; I cannot recall telling him where it came from. Truthfully, I didn't know myself.

Q You have a negro in your employ? A I have several.

Q Did you have a negro in your employ in
96 1949? A Yes, I have several; yes, I had one; I
have several.

Q I see. You heard the testimony of one of these bootleggers, who stated that you and Mr. Leon Minkoff were on the premises during some of these occasions. Do you deny that? A I heard three, as you call them, bootleggers testify. I heard conflicting stories between them; I don't know which one you refer to. If you will refer to a specific case, I will try to answer the question.

Q Did you hear him say that your brother was on the premises at the time the sale was made and this negro employee was there? A Yes.

Q This liquor was taken from the cases and transferred to traveling bags. Do you deny that was done? A I cannot say that it happened in all cases. I will say that it happened in one or two of them.

Q Is Mr. Leon Minkoff in the city? A Yes, sir.

Q Where is he today? A He is in the store.

MR. WISE: I have no further questions.

Re-Direct Examination of Mr. Minkoff

BY MR. DONOHUE:

Q Let me ask you, Mr. Minkoff, having refreshed your recollection by going back over your Forms 52 A and B for the past three years, would you say that you did a large or a small wholesale business? A I would say it was small compared to what you have heard.

Q Now, Mr. Wise was asking you about how you balance your cash. I think it is a matter of public knowledge that every retail liquor store has been personally checked by the Bureau of Internal Revenue in the past two years. Has your place been checked by them? A Yes.

Q As a result of that check, were you called upon to pay any additional tax? A Never. Pardon me, in one

case some expenses were not allowed. I never
97 paid any fine or penalty.

Q In the light of the size of your wholesale business, would it be possible for a repeated number of wholesale sales, in the quantity of 40 cases at a time, to be made without it being reflected in the cash receipts?

A No.

Q Would it be possible for a continued series of wholesale sales in the amount of 40 cases of whisky to be made without you detecting that fact from the cash receipts in your cash register? A You mean by my cash register would I be able to tell?

Q Could you tell if someone else were making large wholesale sales repeatedly? A Truthfully, no.

Q As far as you know, were there any wholesale sales made in your place of business other than by yourself? A Yes.

Q As far as you personally know, were there any wholesale sales made to any person which are not of record in the Forms 52 A and B which are in front of you? A Not that I know of.

Re-Cross-Examination of Mr. Minkoff

BY MR. WISE:

Q Mr. Minkoff, you were arraigned under this indictment, were you not? A Yes, sir.

Q At that time, the indictment was read to you? A I think so; I cannot exactly remember.

Q Read to you by the clerk of the court and they asked how you pleaded? A Yes.

Q You entered a plea of not guilty? A That is right.

Q What was the \$1,000 paid to the Bureau of
98 Internal Revenue for?

MR. DONOHUE: Object to the question; we have been through that time and time again.

MR. PAYNE: We have been through it, but no answer that was satisfactory to me has been elicited from this witness. His only answer was "advise of counsel."

MR. MINKOFF: I paid it on advise of counsel.

MR. PAYNE: Without any examination? A That criminal action would be dismissed and that it would be paid in the form of a civil suit. I think Mr. Markham's letter pointed that out. That is what we asked when we paid that.

MR. WISE: I have nothing further.

MR. MORAN: Would you want to, are you able to give us approximately, the sales in your store between October, 1949 and December, 1949 in gallons per day? A No, sir.

Q Have you any idea? A No, sir.

Q Would you be able to tell us, approximately, the cases per week you sold during that period? A The only thing I have a record of is the total business—I mean cash receipts.

MR. PAYNE: For each day?

A There is no way by the week, only by the month.

MR. MORAN: Forty cases a day would be a pretty big day? A Yes, sir.

Q Does it run that high? A Yes, on Friday or Saturday sometimes you run that high. In fact, I have seen them bring in as many as 75 cases of stock to fill the shelves after a week-end.

MR. PAYNE: Any further questions? (No.) Thank you, you may step down.

* * * *

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Joseph D. Bulman

takes the stand for

Direct Examination

BY MR. DONOHUE:

Q Will you state your full name? A Joseph D. Bulman, attorney, 800 Woodward Building.

Q How long have you been a member of the bar? A Since 1931.

100 Q Do you know Mr. Hyman Minkoff? A I do.

Q How long have you known him? A I have known him about 20 or 25 years.

Q Do you know other people who know Mr. Minkoff? A Yes, I do.

Q Do you know Mr. Minkoff's reputation among the people whom you know, who know him, for being a person of good moral character? A Yes, I do.

Q What is his reputation? A Excellent.

Cross Examination

BY MR. WISE:

Q Mr. Bulman, have you heard that Mr. Hyman J. Minkoff was indicted August 14, 1950, for violating Section 2857(a), Title 26, of the United States Code? A I knew that he had been indicted, for what I don't know. I am not familiar with that Section of the Code.

Q Did you make any inquiry to find out for what he had been indicted? A No, I did not.

Q Knowing that he was indicted on August 14, 1950, is it still your opinion that Mr. Hyman J. Minkoff is of excellent repute? A Yes, I would say he was of excellent repute. My legal training teaches me that an indictment does not carry along with it any implication of character.

Direct Examination of Michael Kapneck

BY MR. DONOHUE:

Q Will you state your full name? A Michael Kapneck.

Q Where do you live? A 4411 16th Street,
101 N. W.

Q What is your business or occupation? A Well, I am a real estate broker at this time. I am Chairman, or have been for the past 11 years, Chairman of one

of the Draft Boards in the area in which Mr. Minkoff resides.

Q Do you know Mr. Minkoff? A I do.

Q How long have you known him? A I have known Mr. Minkoff since birth.

Q Since his birth? A Yes, sir.

Q Do you know other people who know Mr. Minkoff? A I do.

Q Do you know what Mr. Minkoff's reputation is among the people you know, who know him, for being a person of good moral character? A I do.

Q What is that reputation? A Excellent.

Cross Examination

BY MR. WISE:

Q Do you know what business Mr. Minkoff is in? A I do, sir.

Q Do you know how long he has been in this business? A No, sir, I don't.

Q You have been in his place of business? A I have, sir. May I add that I have never tasted beer, whisky or wine.

Q I didn't mean to buy anything. You say you have been to his place of business. Do you go there frequently? A I go there in my official capacity as a member of the Selective Service Board, sir.

Q Now, did there come a time, Mr. Kapneck, that you learned of an indictment that was presented and returned by the Grand Jury against Mr. Minkoff, Mr. Hyman J. Minkoff, on August 14, 1950? A Only what I read in the paper. I know nothing about the case, sir.

Q Did you make any inquiry of anyone to find out with what Mr. Minkoff had been indicted? A Knowing the family and knowing the record of the young man—

MR. WISE: Answer "yes" or "no," and then explain.

MR. PAYNE: Please answer the question properly first.

WITNESS: No, I never.

MR. WISE: Now you may explain.

WITNESS: As I said when I started out—I have known the family for many years, I have known of their reputation; I inducted one of the members into the armed forces, and one of the other youngsters was blown up out of a ship on several occasions, and I have always respected those boys as being most honorable.

Q I take it that you know nothing about Mr. Minkoff's activities as the holder of a Class "A" Retailer's liquor license? A No, I do not.

Q Having read about this indictment in the paper, you made no effort to find out what the charge was or anything about it, is that right, sir? A No, I did not.

Q Did you talk with Mr. Minkoff about it? A No, sir.

Q After you learned of this indictment of August 14, 1950, Mr. Kapneck, did that cause you to change your opinion with respect to Mr. Hyman J. Minkoff's character and integrity? A No, I still have the same regard and feel the same as I have in the past.

MR. DONOHUE: Have you been told that that indictment was dismissed by the United States Attorney? A No, I was not, sir.

MR. WISE: Were you told that Mr. Minkoff paid \$1000 to the United States Government in settlement of this case? A No, I know nothing about that.

103 *Direct Examination of B. F. McAllister*

BY MR. DONOHUE:

Q What is your full name, sir? A Basil F. McAllister.

Q Where do you live, sir? A 809 Taylor Street, N. E.

Q What is your business or occupation? A At present I am retired from the Metropolitan Police Department and have been so retired since the first day of November.

Q What length of time did you spend on the force?
A Twenty-nine years.

Q With what rank did you retire? A As a Captain.

Q Do you know Mr. Hyman J. Minkoff? A I do.

Q How long have you known him? A Since about 1943.

Q Do you know other people in the community who know Mr. Minkoff? A I do.

Q Do you know what Mr. Minkoff's reputation is among other people in the community, whom you know who also know him? A Yes, sir.

Q What is his reputation? A Excellent.

Cross Examination

BY MR. WISE:

Q Captain McAllister, at what precinct were you assigned at the time of your retirement? A I was assigned to #10, sir.

Q Does #10 precinct embrace the premises 1400 North Capitol Street, N. W.? A No, sir.

Q In what precinct are premises 1400 North Capitol Street, N. W.? A No. 2.

104 Q Were you ever assigned as Commanding Officer, or an officer of inferior rank, to #2 precinct?
A I was. I was a Lieutenant in #2 from 1943 until July 1, 1948.

Q When were you retired? A I retired the first day of November, 1950.

Q Now, while you were on active duty as a Commanding Officer in #10 precinct, did there come a time when you learned that Hyman J. Minkoff had been indicted by the Grand Jury in the District of Columbia, on August 14, 1950? A There did.

Q And how did you receive that information, Captain?

A Read it first in the paper, in the newspapers, and later on I talked to Mr. Minkoff myself. I had occasion to go in there, I think sometime on—I don't know, possibly in October. I know that I had been out West, the doctor had sent me out West, I had been ill for almost a year. I was not working at the time, I had not worked since the first of last August; I was not working at the time. I went by his place and I said, "I understand something has happened to you." He said, "Mac, it is a matter of records. I have not done anything wrong myself; I don't know if I made the wrong records; it does not seem to be the right record. I feel that I am going to come out of it all right." I have known Hyman Minkoff since 1943; I was a Lieutenant in the precinct. I had occasion to go in there once in a while, not that I was called. I would walk in and say, "Hello." The place was orderly; I remember no complaints. I know on the occasion of my promotion, we were friends enough when I was promoted for Mr. Minkoff to give me a little fountain pen for a desk. We were just friends like that. I felt that he was a man that I could be friendly with without being wrong on my job. I had a duty to perform and I realize that sometimes people are engaged in activities where you cannot afford to be too friendly. I felt that I could be friends with Mr. Minkoff.

Q As a police officer, and still on duty, although sick but not yet retired when you talked with Mr. Minkoff, did you ask him any more about the indictment?

105 A No, I didn't feel that it was my place to make an investigation. The man was indicted, evidently the evidence was in. It was more or less of a friendly proposition; he was in a little trouble; I was not there for the purpose of making an investigation; to be honest with you, I thought it was all right.

Q You lived on Taylor Street at that time, did you not? A Yes.

Q How soon after you read about this indictment of Mr. Minkoff's in the paper did you visit him? A I don't think until in October if I remember right. I went out to visit my brother in Nebraska. It was after I came back.

Q This was your first opportunity to see him after seeing the article in the paper? A It was not my first opportunity to see him—I don't know—it was the first time I saw him—the first time I did see him after that happened. I cannot fix the date.

Q You did know, as a police officer, that an indictment returned by the Grand Jury, if proven, would be a felonious offense, didn't you? A That is right.

Q You were apprehensive, were you not? A I was as a friend. That is one reason I spoke to him, somehow it did not ring true to me. I thought I knew the man; I had a high regard for him; it didn't ring true to me.

Q Did Mr. Minkoff go into any detail and tell you anything about any of these charges in the indictment? A Nothing more. He said he had evidently made some wrong records or it was alleged he made wrong records. He thought he had done the right thing; he thought he was all right.

Q Did he tell you anything about keeping improper records? A No.

Q About failing to put into the records certain records that should have been made?

MR. DONOHUE: I object to the question because he was not charged with any such offense.

106 MR. WISE: Just a minute, if the Board please.

If the Board please, the third charge of the indictment, which is Government's Exhibit #2, charges that the defendants, Hyman J. Minkoff and Leon P. Minkoff, willfully refused and neglected to make an entry of the said sale and disposal at their said place of business.

MR. DONOHUE: We showed the Board yesterday that the records show that an entry was made.

MR. WISE: I don't intend to argue the case at this time. I submit that when Mr. Donohue showed the Board the entry, he showed an entry that was made only of a sale to Mr. Lisk; he showed no sales or entries made to Mr. Pridemore or Mr. Short.

MR. DONOHUE: He was not indicted for such failure; I object to the question.

MR. MORAN: He testified that entries were not made.

MR. PAYNE: It appears from what Mr. Wise has just said that there was such a charge.

MR. WISE: Captain McAllister, did he tell you that he had failed to make, in his records, certain entries for the sale of certain alcoholic beverages? A No, I don't remember that he told me anything like that; I don't remember that I asked him anything like that. I didn't attempt to investigate this case or anything of the kind.

Q You were interested, were you not? A I was interested enough because he was a friend of mine.

Q He was a friend. At your first available opportunity, after your return from your trip, having read this article, you went over and had a talk with Mr. Minkoff? A I don't think it was at the first available opportunity, however, I made it my business to go down and inquire into the case. I made no particular effort to go down and delve into this matter.

Q I don't mean to confuse you. You have testified in a great many cases and I know that you are certainly capable of taking care of yourself on the stand. I am merely trying to quote to you, or restate to you, what I understand your testimony to be. I think you told
107 me that after having read this article in the paper, you took a trip for your health and I asked you when the first opportunity was presented to you to see Mr. Minkoff after you had read the article and you said that you didn't do it right away, that you didn't go to see him until October because you had taken this trip? A Thinking back, this was in August—I didn't go to

Nebraska until in October. I got back about the 24th or the 25th, I only stayed two weeks, so it was the latter part of October.

Q Now, Captain, did you later learn that Mr. Minkoff paid to the United States government \$1,000 in settlement of his criminal liability in this case? A Not until this morning.

Q Now, having learned of the indictment in August of 1950, and having learned, this morning, that Mr. Hyman J. Minkoff paid \$1,000 to settle this criminal liability, is it still your opinion that Mr. Minkoff is of excellent character, sir? A Mine is, yes, I still think he is all right.

MR. WISE: I have no further questions.

Direct Examination of James A. McNamara

BY MR. DONOHUE:

Q What is your full name, sir? A James A. McNamara.

Q What is your business or occupation? A Athletic Director at the Jewish Community Center.

Q How long have you been an Athletic Director? A Twenty-five years.

Q How long have you lived in Washington, D. C.? A Thirty-two years.

Q Do you know Mr. Hyman J. Minkoff? A Yes, I do.

Q How long have you known him? A About twenty-two years.

108 Q Do you know other people in the community who know Mr. Minkoff? A Yes, I do.

Q Do you know what the reputation is of Mr. Minkoff among the persons whom you know in this community who also know him for being a person of good moral character? A Yes.

Q What is his reputation? A Very good—excellent character.

Cross Examination

BY MR. WISE:

Q Mr. McNamara, where is the Jewish Community Center? A 16th and Q Streets.

Q And you have known Mr. Minkoff only as a member of that Athletic Center, or have you known him personally? A We have played ball together, he has been around with me since he has been a young boy. Naturally, in a character building community you have an opportunity to find out the type of man a person is, especially on the athletic courts where they are playing ball. He played ball for me and later came back as a business man, and I have always found him to be a boy of very fine character.

Q Is that the extent of your observation of Mr. Minkoff, only as an athlete and in only athletic activities? A We contact the business men in the city at various times, collecting for our various causes, our Boys' Club, etc. We have been through some hard times financially, and you go to various business men, and you sometimes find those men, some of them, very anxious to help the cause and some are not. Mr. Minkoff has always been very cooperative.

Q So that Mr. Minkoff, in addition to his activities as an athlete at the Jewish Community Center, has always contributed sums of money to your organization? A He pays a membership.

MR. PAYNE: I don't believe that is responsive to the question. The question was—has Mr. Minkoff contributed sums of money to your organization? A
100 Yes, once in a while he will contribute—help us out.

MR. WISE: I want to get this straight. The extent of your acquaintance with Mr. Minkoff, during these 22 years in which you have known him, is—one, as the Athletic Director of the Jewish Community Center of which

Mr. Minkoff is a member, and—two, when you have contacted him at his place of business soliciting contributions for some civic project or organization? A Yes.

Q Have you ever visited him at his home? A No, I have not.

Q Have you gone out with him socially? A No.

Q You say that you know others in the community who know Mr. Minkoff, is that right, sir? A Yes, sure.

Q And you have told the Board, in response to Mr. Donohue's question, that his reputation among others in that community is excellent, is that right, sir? A Yes, sir.

Q How did you learn that his reputation among the other people in the community was excellent, if I might ask?

MR. DONOHUE: I object to the question, if the Board please. I don't think that the question is necessary.

MR. PAYNE: I think that it is a proper question.

MR. DONOHUE: Let the records show my exception to it.

MR. PAYNE: The objection is overruled.

MR. WISE: How did you learn from others in the community, or how did you arrive at the conclusion that the reputation of Mr. Minkoff among other people in the community was excellent? A At various times around the community, there is a social gathering, I might say a banquet, or a dinner held at different hotels, and you find the people attending those affairs of good character and fine people, you don't find the other kind
110 there. Mr. Minkoff and his wife will be there and be around those people. You don't find anybody there who is not of good character.

Q So that, hearing nothing derogatory about the reputation of Mr. Minkoff from anybody in your community, you arrived at the conclusion that his reputation among those other people was excellent, is that right, sir? A Yes.

Q Did you ever talk with any of these people about Mr. Minkoff's reputation?

MR. DONOHUE: Object to the question because the law says it is not necessary.

MR. WISE: It might not be necessary, but I might ask it.

MR. PAYNE: I believe the witness has already stated that he did not discuss such a thing.

MR. DONOHUE: You don't discuss people unless there is something wrong with them.

MR. PAYNE: I don't agree with that. In a discussion, you often hear people say what a fine person somebody is. He was asked primarily what the reputation of Mr. Minkoff was among those he knows who know Mr. Minkoff. I think that it is proper for Mr. Wise to ascertain, if he can, how Mr. McNamara arrived at the answer he gave.

MR. WISE: Now, Mr. McNamara, did you, at any time, learn about an indictment having been returned by the Federal Grand Jury against Mr. Hyman J. Minkoff on August 14, 1950? A Yes, I read it in the paper.

Q Having read it in the paper, did you discuss that matter with anyone in your community, and, I believe that the law says that a community embraces the entire city of Washington? Did you discuss this with anyone in the city of Washington? A I think at the Club, one time, right after that writeup, and the general opinion was that it might have been a mistake or something like that. We handle over 200 people a day, boys and men, and we cannot talk too much about a thing like that. Furthermore, I don't go into peoples personal business.

111 Q Having read that article in the paper, did you make any inquiry as to the truth or falsity of the newspaper article? A No, sir. My business is athletics; when I get through at night I don't have time to go into those things.

Q You were satisfied then, sir, to just believe that a man of Mr. Minkoff's caliber was incapable of doing anything wrong? A I was surprised to read the story and I felt there must have been a mistake of some kind. That is my own honest opinion.

Q How about these people with whom you talked, what was their feeling? A I don't remember their conversation. It was casually brought up. It would be foolish on my part to have a bunch of boys discussing personal business around there. I don't discuss personal business at the Club. When it was casually brought up, I said I was sorry; that was all there was to it.

Q You have testified, under oath, have you not, that Mr. Minkoff's reputation among the people in his community was excellent, have you not, sir? A Yes, sir.

Q Now, did there come a time when you learned that Mr. Minkoff had paid to the United States Government \$1000 to settle his liability under this criminal indictment? A I heard of it. I heard that was the disposition of the case.

Q Can you tell me, sir, please, when you heard about this? A I could not. It was casually passed off.

Q You saw Mr. Minkoff, from time to time, up at your Club? A He has not been up there recently.

Q Have you seen him since August of 1950 at your Club? A I believe once or twice. I would have to look at the record.

Q Have you seen him at his place of business? Have you been there soliciting contributions of any kind since August, 1950? A I went in the store one day to talk to him about a membership. There were a number of people in there. I generally go in and fool around a little. He was busy and I said that I would see him later.

112 I have not been back there.

Q During the time you saw him at the Club since 1950 and when you visited him at his place of busi-

ness, did you ask Mr. Minkoff anything about this indictment? A No, sir.

Q And when you learned about—by-the-way, how did you learn about his having paid this \$1000? A I believe it was in the paper.

Q When you read it in the paper, did you then ask Mr. Minkoff anything about the case? A No, sir. I don't ask anybody else about their business.

Q He was a pretty good friend of yours? A They are all my friends.

Q And having learned that Mr. Minkoff paid \$1000 to settle his liability under this criminal indictment, is it still your opinion that his reputation in the community, and your own personal conclusion, that his reputation is excellent? A Yes, I feel the same way toward him that I did before. I don't know too much about it. As far as I am concerned, he is still the same fellow.

* * *

114 MR. DONOHUE: I offer to prove, in 15 instances, in 1945, the same thing was done and this Board stood moot, and I have a right to raise the question, and the right now to ask what the difference is, and why this respondent is picked out for prosecution.

MR. WISE: Such other records are absolutely immaterial. What was done in one case does not mean the same thing has to be done in another case. I have just cited an example—where a prosecutor may nolle pross a case of robbery against one man, is it to be said that it is a precedent—that he is, therefore, stopped, precluded or prohibited from prosecuting another case of robbery against another person as long as the statute remains on the books.

MR. DONOHUE: You have told me that this is not a prosecution. Now you revert back to the same thing. In one breath you say that we are not being prosecuted and then you say we are, and I say we are. You are in-

quiring into this man's character. I think that the action of the Board in 1945 was right because a technical violation occurring in the keeping of books cannot affect character.

MR. MORAN: We have a character witness on the stand.

MR. DONOHUE: I would like a ruling.

MR. WISE: I ask that the request be denied because such evidence would be highly irrelevant.

MR. PAYNE: The motion is denied.

* * * *

115 *Direct Examination of Mr. Meyer Siegel*

BY MR. DONOHUE:

Q Would you state your full name? A Meyer Siegel.

Q Where do you live? A 1415 Tuckerman Street, N. W.

Q What is your present business or occupation? A Real Estate.

Q How long have you been in the real estate business? A Off and on for 12 years.

Q How long have you been in Washington? A Since 1921.

Q You were at one time the holder of a license issued by this Board? A Yes, both retail and wholesale.

Q How long have you known Mr. Hyman J. Minkoff? A About 20 years.

Q Do you know other people who know him? A Yes.

Q Do you know what Mr. Minkoff's reputation is among the people you know who know him for being a person of good moral character? A Yes. We have gone out socially for the past 15 years—there must be a crowd of 100 people in our immediate group and wherever we go either Mr. Minkoff or Mrs. Minkoff are there, we socialize together, and we think the world of them,

and his character is excellent as far as I am concerned.

116 Q What is his reputation among those people whom you know who know him? A He has a fine reputation.

Cross Examination

BY MR. WISE:

Q Did I understand you to say, Mr. Siegel, that you were formerly licensed as a wholesale liquor dealer? A Yes, sir.

Q And later on you had a retail "A" store? A No, I had a retail "A" store first, then went into the wholesale liquor business.

Q You later got a wholesale liquor license? A Yes.

Q Over what period of time did you have the wholesale liquor license? A Approximately from 1945 to 1948, I believe.

Q Over how long a period of time did you have your retailer's "A" license? A From 1935 to 1941.

Q Where was it located? A 2442 - 18th Street, N. W.

Q As a wholesaler, did you do business with Hyman J. Minkoff; did you sell him any beverages? A Yes, I did.

Q Over how long a period of time did you sell Mr. Minkoff beverages? A From the day I started until the day I quit.

Q Did he do a large volume of business with you? A He had a fine business. I would not say he was my largest customer.

Q Was it at that time that you had the privilege
117 of meeting and knowing Mr. Minkoff? A I have known him for 20 years.

Q You knew him before you went into the liquor business? A I knew him back in 1930 when there was no liquor involved.

Q I believe you answered Mr. Donohue's question by saying that you knew people in the community who knew Mr. Minkoff, is that right, sir? A Yes, sir.

Q You also made the statement that his reputation among those people was fine? A Right.

Q Have you talked with these people at all about him? A We see each other all the time.

Q Answer my question, please? Have you talked to these people about Mr. Minkoff? A We never discuss each other; no.

Q Did there come a time when you received information that Mr. Minkoff had been indicted by a Federal Grand Jury here in the District of Columbia? A Yes, sir.

Q Did these people talk with you about this indictment? A No, sir.

Q Now, I understand you to say that you went around with about 100 people? A That is right.

Q And you were all closely associated, all very good friends, they all knew Mr. Minkoff, is that right? A That is right.

Q Now, there was a newspaper article about this indictment, was there not, sir? A Yes.

Q Did you read the article? A Yes, sir.

Q After you read the newspaper article, how soon after that did you see Mr. Minkoff? A We see each other twice a month at least.

Q After the newspaper article, after you read it? A About two weeks after that.

Q At that time, did you see and talk with some of these people, these hundred people that you are friendly with and go around with? A Well, two or three of them asked me because they knew I was experienced in the wholesale liquor business what the indictment was. I told them someone claimed that he had not entered in the Form 52 what he had sold. My answer was that he had a perfect right to sell that whisky. If a man walks into

the store, he has a right to sell him. I explained to those people that he didn't do anything legally wrong; as long as he gives that party a receipt, he has a right to sell that man whatever he wants.

Q These friends of yours, and Mr. Minkoff's, came to you and asked your opinion about it because you had been in the liquor business? A No, it was in the conversation, what did I think of his indictment. That happened once or twice and that is the answer I gave them.

Q You told them about the 52 A and B books, about the sale and receipt for alcoholic beverages. Did you tell them that anything over five gallons to the same people had to be recorded in that book? A Correct.

Q Now, did there come a time when you learned about a settlement having been made by Mr. Minkoff with the Federal Government of \$1000 to cover the charges in the indictment? A I heard about it. I didn't read about it, I learned about it.

Q How did you learn about it? A Somebody said something to me about it.

Q Did they then say anything about the character or reputation of Mr. Minkoff? A That had nothing to do with the character or reputation of Mr. Minkoff as far as I am concerned.

Q Answer my question? A No, they had nothing to say.

119 Q And after you learned about the \$1000 settlement, did that change your opinion about the fine reputation of Mr. Minkoff? A Definitely not.

MR. WISE: I have no further questions.

MR. PAYNE: You may be excused.

Direct Examination of Joseph Carroll

BY MR. DONOHUE:

Q State your full name? A Joseph Carroll.

Q Where do you live? A 3200 - 16th Street, N. W.

Q What is your business or occupation? A I am a builder.

Q How long have you been a builder? A Fourteen years.

Q Do you know Mr. Hyman J. Minkoff? A Yes, sir.

Q How long have you known him? A Twenty-five years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know what Mr. Minkoff's reputation is among the people you know who know him for being a person of good moral character? A It is excellent, sir.

Cross Examination

BY MR. WISE:

Q Mr. Carroll, did there come a time when you learned of the indictment of Mr. Hyman J. Minkoff by a Federal Grand Jury? A Just what I read in the paper, sir.

Q And did you make any inquiry of any of your friends, or any of the Federal officials, or of anyone else, to find out just what the reason for the indictment
120 was sir? A No, sir.

Q Did you believe or disbelieve what you read in the newspaper? A Well, knowing Mr. Minkoff I felt he didn't do anything wrong; it was something that could be taken care of. I let it go like that.

Q Do you know Mr. Meyer Siegel who has just testified? A Yes, sir.

Q Are you a pretty good friend of his, sir? A I see him occasionally.

Q Are you one of the people who goes around with his friends? A We do.

Q And with Mr. Minkoff's friends? A Yes.

Q You knew Mr. Meyer Siegel was, at one time, a wholesale liquor licensee, and also a retail licensee, did you not, sir? A Yes, sir.

Q You knew, at one time, that he held both types of licenses, didn't you? A Yes, sir.

Q Anyone else in the crowd that you went around with, to your knowledge, who knew Mr. Minkoff—did anyone else hold such a liquor license? A Hold a liquor license you say?

MR. WISE: Yes. Either a wholesale or retail liquor license? A Offhand I cannot say right now, most likely there was somebody. At the present time I could not tell.

Q As far as you are aware, Mr. Meyer Siegel was about the only one you knew that had been in the liquor business? A That is right.

Q Did you discuss this matter of this indictment with Mr. Meyer Siegel? A No, sir.

Q Did you discuss it with Mr. Hyman J. Minkoff? A I talked to him. I didn't go into a lot of details or anything like that.

121 Q What was the substance of your conversation with Mr. Minkoff? A Well, I just asked him what it was all about. He said that there was some mistake, a bookkeeping error, but he knew it would be rectified—that is all.

Q Did any of your other friends that went around in the same crowd with you and Mr. Siegel and Mr. Minkoff, discuss this matter with you. A No.

Q Did you discuss it with them? A No, sir.

Q Having received information, through the press, that Mr. Minkoff had been indicted, is it your testimony that you asked no one about it or discussed it with no one except Mr. Minkoff? A That is right.

Q And based on that, is it your testimony that Mr. Minkoff is of good repute? A Yes, sir.

Q Did there come a time when you learned of this settlement of \$1000, which was paid to the Federal Government in settlement of this criminal liability? A I read it in the paper.

Q And what did you do, if anything, after you read that in the paper? A I didn't do anything.

Q After you read that in the paper, did you again see Mr. Minkoff? A Yes, I saw him.

Q How soon after you read that in the paper did you see Mr. Minkoff? A Maybe ten days or two weeks.

Q Did you also see Mr. Meyer Siegel after that? A No, sir.

Q And when you saw Mr. Minkoff, did you ask him anything about this thousand dollar payment?

122 A No, sir.

Q That didn't occur to you, did it? A No, sir.

Q And having received the information that Mr. Minhoff had paid \$1000 to settle this liability, are you still of the opinion that Mr. Minkoff's reputation is good?

A Yes, sir.

MR. DONOHUE: Thank you Mr. Carroll.

123 Whereupon another witness is called to the stand.

Direct Examination of Walter Podrog

BY MR. DONOHUE:

Q Will you state your full name? A Walter Podrog.

Q Where do you live? A 5727 - 16th Street, N. W.

Q What is your business or occupation? A Real estate broker.

Q Do you hold any position with the Washington Realty Company? A Yes, sir; I am President and Treasurer.

Q How long have you been in the real estate business in Washington? A Eighteen years.

Q Do you know Mr. Minkoff? A Yes.

Q How long have you known him? A About seven years.

Q Do you know other people in the community who know Mr. Minkoff? A Yes, sir.

Q Do you know what Mr. Minkoff's reputation is among people in the community you know who know him for a person of good moral character? A Very good.

MR. DONOHUE: You may have the witness.

124 *Cross Examination of Walter Podrog*

BY MR. WISE:

Q How do you know it is very good? A Primarily because I have never heard anything bad.

Q Have you ever discussed his reputation with them?

A No, sir.

Q Did there come a time when you received information that Mr. Minkoff had been indicted by a Federal Grand Jury in the District of Columbia? A Yes, sir.

Q And when did you receive that information and how? A Newspaper article, the Star.

Q And, having received that information, did you then discuss the matter with Mr. Minkoff? A No, sir.

Q Did you discuss the matter with any Federal authorities to try to determine, or make any inquiry whatever, to try to ascertain the truth or falsity of that newspaper article? A No, sir.

Q Did you believe the newspaper article? A Believe what I read?

Q Yes. A Yes, sir.

Q You believed it. And, having read it and having believed it, is it your testimony that you did not discuss the matter with any of the people in the community about which you have testified, among whom the reputation of Mr. Minkoff is good? A You didn't ask me that question. You asked me about Federal authorities. I spoke to someone not connected with Federal Government.

Q I will amend the question to include not only Federal authorities but anyone? A Yes, sir. I am asso-

ciated with his brother in the real estate business,
125 building business, and asked him what it was and
reached the conclusion it was a bookkeeping matter,
which is far from being criminal in my mind.

Q What is his brother's name? A Harry.

Q Do you also know Mr. Leon Minkoff, the other
brother? A Yes, sir.

Q Did you discuss this matter with either Mr. Leon
Minkoff or with Mr. Hyman J. Minkoff? A No, sir.

Q You were content then, as I understand it, to dis-
cuss it only with a brother builder of yours who is a
brother of both Mr. Leon and Hyman J. Minkoff? A
That is right.

Q You went no further than that? A That is cor-
rect.

Q Did you discuss this matter with any of the people
in the community about which you have just testified,
among whom the reputation of Mr. Minkoff is good?
A No, sir.

Q Did anyone of them say anything to you about it?
A No, sir.

Q Do you know Mr. Meyer Siegel who has just testi-
fied? A Yes, sir.

Q He is also in the real estate business? A Yes,
sir.

Q Did you discuss it with him? A No, sir.

Q Did you know Mr. Meyer Siegel at one time was a
licensee of this Board, once held a wholesaler's and
another time a retailer's license? A Yes, sir.

126 Q But you didn't discuss that with Mr. Siegel?
A No, sir.

Q He is a member of the Washington Real Estate
Board too? A I don't know if he is—I am.

Q You are President? A No, I am President and
Treasurer of the Washington Realty Company. I am a
member of the Washington Real Estate Board.

Q I will ask if Meyer Siegel is a member of the Washington Realty Company? A No, sir.

Q How long have you known Mr. Siegel is a former licensee of this Board? A I have known Mr. Siegel for twenty years. I knew when he was—had a retail store and I knew when he went in the wholesale business and went out. I don't know when, but I knew he went out.

Q Following reading this article in the newspaper did you at any time talk with Mr. Meyer Siegel about this? A No, sir. Would you like me to tell you why?

Q Yes. A I am a member of the Bar and have been since 1936, but don't practice and never have practiced, and I think I know a little more about legal procedure than a layman would, and I don't believe the average person without legal knowledge would understand it as I do. I wouldn't have to go the Mr. Siegel. He wouldn't tell me any more than I felt I already knew about it. An indictment would be for some statutory offense.

Q You knew an indictment was not a conviction? A Yes, sir.

Q Now, did there come a time, sir, when you learned that Mr. Minkoff paid the Federal Government one thousand dollars to settle his liability under this Federal indictment? A This morning, sir, here.

Q Having learned that intelligence this morning, is it still your opinion that Mr. Hyman J. Minkoff's
127 reputation is very good? A Yes, sir.

MR. WISE: Thank you. No further questions. Whereupon another witness is called to the stand.

Direct Examination of Thomas J. Norris

BY MR. DONOHUE:

Q What is your full name? A Thomas J. Norris.

Q Where do you live? A Silver Spring, Maryland,
10217 Ridgemoor Drive, Silver Spring.

Q What is your business or occupation? A Banking.

Q What bank? A Bank of Commerce and Savings.

Q In what capacity? A Vice President of the Bank of Commerce and Savings.

Q Do you know Mr. Hyman Minkoff? A I do.

Q How long have you known him? A Approximately thirteen years.

Q Do you know other people in the community who also know him? A Yes.

Q Do you know what Mr. Minkoff's reputation is among people who know him and who you know for character? A Excellent.

MR. DONOHUE: You may have the witness.

Cross Examination of Thomas J. Norris

BY MR. WISE:

Q Have you known Mr. Minkoff personally or in a business way? A Business capacity.

Q Solely in a business capacity? A That is right.

128 Q You have never visited with him at his home? A Never.

Q Have you ever been in his place of business? A Yes.

Q And you went to his place of business in a business capacity? A Definitely.

Q Since you have known Mr. Minkoff, I think you said thirteen years, is that right? A Approximately thirteen years.

Q How many times have you visited his place of business? A It is hard to say.

Q Your best recollection? A I would say approximately twice a year.

Q And does Mr. Minkoff come to see you as an official of the bank? A Yes.

Q How many times does he come to see you? A I see him quite a bit in the lobby, but as far as visiting me, once or twice a year, I would say.

Q So, these couple times a year that you see him at his place of business and the few times a year that he might come to see you at the bank, is that the sole basis for your statement that his reputation among others in the community is excellent? A I know other people in the community who know him and so forth.

Q And you have discussed his reputation with them, Mr. Norris? A At times his name has come up in conversation.

Q Have you ever heard any derogatory statements about his character? A Never.

Q Now, did there come a time, Mr. Norris, when you received information that Mr. Hyman J. Minkoff had been indicted by a Federal Grand Jury in the District? A It was brought to my attention.

129 Q How? A Through the newspaper.

Q Someone bring it to you? A I read it through the press.

Q When you received that intelligence what, if anything, did you do? A I talked to Mr. Minkoff. I don't know whether it was the next day or within a few days. He happened to visiting the bank. He was in the lobby and I made it my business to talk to him.

Q Were you apprehensive about it? A I made it my business to find out what it was about due to his relations with the bank.

Q What did he tell you? A That it was in regard to bookkeeping: that as far as he was concerned everything was all right: that they possibly accused him of mistakes in his books on certain items in there.

Q Did you, following that conversation with Mr. Minkoff, and as Vice President of the Bank of Commerce and Savings, as an official of that bank, make any further inquiry to ascertain anything further about this charge and to find out and to check on what Mr. Minkoff had

told you in response to any questions you put to him at that time? A Definitely not.

Q You didn't do anything about it? A I did not.

Q I believe you stated you do know others in the community who know Mr. Minkoff? A Yes.

Q Is that in the community of the bank? A In the community of the bank.

Q Have you talked with any people about him? A No.

Q Have any people come to you as Vice President of the bank and discussed Mr. Minkoff's reputation with you since the indictment was returned last August?

130 A They have not.

Q Did there come a time, Mr. Norris, when you received information that Mr. Minkoff had paid a thousand dollars to the Federal Government to settle this criminal liability? A It did.

Q When did you receive that information? A The day he received a certified check to send down there.

Q He banks with you and it was your bank which certified the check? A That is right.

Q And how was that check drawn, do you remember? A I don't even recall the check. I believe I signed it. I believe it was payable to the Collector of Taxes, I am not positive, or, maybe, the Alcoholic Beverage Control Board.

Q You sign a great many certified checks during the course of a day? A Not too many.

Q And if a check is to be certified you don't ask what for? A No.

Q You know it is in the bank and you sign the check? A That is right.

Q So you don't ask your depositor what the check is for? A I happened to in this case. I talked to him on it.

Q Why? A He mentioned to me he was sending this thousand dollar check in and, if I remember correctly, it was to clear the case up.

Q Clear what case up? A The indictment as far as I know—what he was charged with.

Q He told you it would clear the indictment, it would clear it up? A I don't remember the exact words; it was in payment.

Q Do you recall, sir, how long ago it was done? A Just guessing I would say maybe three weeks ago; it may be a little longer.

131 Q Do you know a man by the name of "Markham", a lawyer? A No.

Q Just what did Mr. Minkoff say, if anything, in addition to that about this case at that time? A Nothing at all.

Q When you received this information that Mr. Minkoff was paying this thousand dollars to the Federal Government in settlement of this criminal liability, is it your testimony that you still considered Mr. Minkoff to have an excellent reputation? A Definitely. In my opinion it was just a bookkeeping error, if there was one.

Q You made no further inquiry in this matter? A No.

MR. WISE: No further questions.

MR. DONOHUE: Thank you.

Whereupon another witness is called and takes the stand.

MR. DONOHUE: Were you sworn, Mr. Hornstein?

MR. HORNSTEIN: No.

(Mr. Payne swears Mr. Hornstein in.)

Direct Examination of David Hornstein

BY MR. DONOHUE:

Q State your name for the record? A David Hornstein.

Q Where do you live? A 7738 - 16th Street, N. W.

Q What is your business or profession? A Attorney.

Q How long have you been a member of this Bar?

A Twenty-five years.

Q Do you know Mr. Hyman Minkoff? A Since he was a little boy.

Q Do you know other people in the community who know him? A Yes, I know a great many.

132 Q Do you know what Mr. Minkoff's reputation is among persons in the community whom you know and who also know him for character? A Yes.

Q What is it? A He bears a very fine, excellent reputation.

MR. DONOHUE: You may have the witness.

Cross Examination of David Hornstein

BY MR. WISE:

Q Mr. Hornstein, have you ever represented Mr. Minkoff? A On one occasion.

Q How long ago was that? A I would say in the last two or three years. At the moment I am having trouble remembering what it was about. It was about two or three years ago.

Q I am not asking what it was about. I am asking if you represented him? A Yes, on one occasion about two or three years ago.

Q And, I think you stated you have been a member of the Bar twenty-five years. I have had the privilege of knowing you for at least that long, Mr. Hornstein. And I think you stated that Mr. Minkoff's reputation among others in the community whom you know is very fine? A Yes, sir.

Q Very excellent reputation, is that right, sir? A Yes, sir.

Q Now, did there come a time, Mr. Hornstein, when you received information about the indictment in the

United States District Court against Hyman Minkoff?

A Yes.

Q How did you receive that information? A I read it in the newspaper.

133 Q After you received that information did you talk with Mr. Minkoff about it? A Not about the indictment, although I was in his company after that.

Q And did any people in your presence talk with Mr. Minkoff about it? A Yes, sir.

Q How soon after the indictment was this? A A matter of a couple of weeks.

Q And did Mr. Minkoff make any explanation either to you or to these people in your presence about the indictment? A I think on one occasion when I was invited to the same place for dinner, although I am not in the same age group he is, Joe Bulman was present, and I believe there was a conversation which I overheard between Joe Bulman and Mr. Minkoff, in which Mr. Minkoff was telling Joe about this 52(a) and (b) book and in his judgment it was a shame he was indicted but he wasn't concerned with it because he felt he was right.

Q You are not familiar with the 52(a) and 52(b) books? A I know what they are.

Q You have in the past represented some liquor dealers? A Yes.

Q And you presently represent some? A Yes, sir.

Q And you know what the purpose of these books is, do you not, sir? A I think so.

Q You know they are a requirement by the Federal Government to record inventories of liquors received and liquors sold in amounts of five gallons or more, five wine gallons or more, to one person? A That is my understanding.

Q Did you talk with Mr. Minkoff about this and ask about the facts of the case? A No, I never asked questions about it and he never told me about it.

134 Q Did Joe Bulman tell you about it? A Well, several times after we were together at this dinner I talked to Joe Bulman about it because we are together every day. I asked what he knew about it and was anything new and it was from Joe I learned, I believe I learned, the indictment had been dismissed. But among other people I knew that knew Mr. Minkoff I didn't have any discussion.

Q Mr. Hornstein, after you received the information that this one thousand dollars had been paid to the Federal Government by Mr. Minkoff in settlement of this criminal liability did you then change your opinion about the reputation of Mr. Minkoff in any way? A You mean after the indictment?

Q After the settlement. A No; because I felt that many times compromises are the wise things to do, just to avoid the trouble, times, and even sometimes the risk of not being able to prove that you are right. I have always felt that compromises are not a reflection on one's character.

Q Of course, this type of case is susceptible to compromise? A Yes.

MR. WISE: I have no further questions.

MR. DONOHUE: Thank you. That is the list of character witnesses at this time.

MR. PAYNE: We will recess then until 1:30 in this room. Those witnesses who have already testified need not return, but they can if they so desire.

(Hearing recessed at 12:15 P.M.)

135 Continuation of hearing in the matter of Hyman J. Minkoff. T/A Acme Supply Company, 1400 North Capitol Street, N. W.—Time 1:30 P.M., Wednesday, January 24, 1951.

(Mr. Hogarth William Colston and Mr. Morris Forman, two additional character witnesses, sworn by Mr. Payne.)

Direct Examination of Hogarth William Colston

BY MR. DONOHUE:

Q What is your full name? A Hogarth William Colston.

Q Where do you live? A 1200 Highland Drive, Silver Spring, Maryland.

Q What is your business or occupation? A Wholesale liquor business, "Beitzell's".

Q How long have you been in the wholesale liquor business? A Sixteen years; it will soon be seventeen.

Q Do you know Hyman Minkoff? A Yes, I do.

Q How long have you known him? A I would say at least fifteen years.

Q Do you know other people in this community who also know him? A Quite a few.

Q Do you know what his reputation is among those people you know who know him as being a man of good character? A I have never heard anything detrimental as to his character.

MR. WISE: Object. The question was—"Do you know other people in the community who know him?"

MR. DONOHUE: The question was—"Do you know what his reputation is in the community among those people you know who know him as being a man of good character?" A I have never heard anything detrimental about his character.

Q Do you consider him to be a good character or bad character? A I consider him a good character.

MR. DONOHUE: You may have the witness.

136 *Cross Examination of Hogarth William Colston*

BY MR. WISE:

Q Mr. Colston, where is your place of business in the District of Columbia located? A 1357 New York Avenue, N. E.

Q And you have been in the wholesale liquor business for sixteen years? A Just since repeal in Washington actively, yes, sir.

Q And is Mr. Hyman Minkoff one of your customers? A I think he has been a customer off and on during this entire length of the period.

Q Has he been a heavy purchaser from you or a moderate purchaser from you? A Both. I can remember when he was a very small customer.

Q Later a large customer? A Then, I think like a lot of them, his business grew. We consider him a good consistent customer.

Q I believe you have stated that you have talked with other people in the community who know Mr. Minkoff?

MR. DONOHUE: I object. He didn't so state. I asked if he knew other people.

MR. WISE: I will reframe the question. I believe you stated you knew other people in the community who knew Mr. Minkoff? A That is correct.

Q And then you drew the conclusion that you had heard nothing detrimental from these people about Mr. Minkoff's character, is that right, sir? A That is right—whether they were friends or his customers or any competitors.

Q About how many people in the community have to spoke to about him? A Oh, I am speaking in generalities. I haven't gone out and spoken to anyone about Mr. Minkoff. It is over a period of years. I don't know, it might be a thousand. We meet in groups.

137 Q But you have never heard anything detrimental said by any of these people about his character? A That is right; not even from his competitors.

MR. MORAN: That is quite something in the business.

THE WITNESS: I think it is unusual, yes, sir.

MR. WISE: Did there come a time when you had information Mr. Minkoff had been indicted in the District Court of the District of Columbia, the same having been returned by the Grand Jury in the District against Mr. Minkoff? A I think it was several months ago, unless I am mistaken.

Q Yes; I think the date was August, 1950. And how did you learn of that indictment? A I don't know; the newspaper, I believe.

Q Having learned of the indictment did you talk with Mr. Minkoff about it? A No.

Q Did you ask him anything about it? A One time I saw him at lunch is the only time I remember, and it was the only thing a man could do is to ask how he was getting along; but I don't think I asked about the particular situation as to the reason or anything else.

Q You did discuss the indictment, the fact you knew of the indictment? A I think the conversation was something like—"How are you getting along, Hy?" and, "I hope everything is all right."

Q What did Hy say to you, meaning Mr. Minkoff? A I fail to recollect any particular answer.

Q Did any particular people in the community of which you are a resident or any people within the District of Columbia ever say anything to you about this indictment then pending against Mr. Minkoff? A I don't recollect any statement.

138 Q Did you make any inquiry of anyone about the truth or falsity of the indictment? A No.

Q Did you believe what the newspaper article said? A It is a tough question. I never believe all or the entirety of what the newspaper says. I like to read behind the headlines.

Q Is it still your testimony that still not believing it you made no inquiry to anybody? A No, sir; I wasn't interested enough to form any particular conclusion.

Q Did there come a time you learned Mr. Hyman Minkoff had paid the Federal Government one thousand dollars as a settlement of this criminal charge against him?

A The first time I knew of the thousand dollars I think was in this morning's newspaper.

Q And, having—And you read the article? A This morning.

Q And, having read the article, did that cause you to form a different conclusion about the character of Mr. Minkoff and cause you to change your opinion in any way? A No. On the short notice at this time I would say no, it absolutely did not.

Q It doesn't take long for you to change your mind does it? A Personally, I don't change so fast.

Q What was your reaction when you read it in the paper this morning? A Over a busy desk and trying to do other things it had no particular significance to me, that I didn't make any quick decision one way or the other.

Q Now, were you asked by either Mr. Donohue or Mr. Minkoff to come down here today before you read this article in the paper or after? A A telephone call brought me down.

Q When was that call, before or after you read the article? A After.

139 Q After you read it? A Yes, sir.

Q Have you, since the indictment was returned, had occasion to visit Mr. Minkoff's place of business? A I think so; I wouldn't be surprised but I did.

Q Did Mr. Minkoff ever tell you about any books or records that he kept with the Federal Government? A No, sir.

MR. WISE: Thank you very much.

MR. DONOHUE: Thank you.

MR. PAYNE: You may be excused, Mr. Colston.
Whereupon another witness is called to the stand.

Direct Examination of Morris Forman

BY MR. DONOHUE:

Q What is your full name, Mr. Forman? A Morris Forman.

Q Where do you live? A 6736 Pomander Lane, Chevy Chase.

Q What is your business or occupation? A Wholesale liquor business.

Q How long have you been in the wholesale liquor business? A Ten or eleven years.

Q Do you know Hyman Minkoff? A Oh, yes, I guess I do.

Q How long have you known him? A Oh, about fourteen or fifteen years.

Q Do you know other people in the community who also know him? A Yes.

Q Do you know what his reputation is in this community among those whom you know who also know him for good character? A Many of the people I know know Mr. Minkoff. We travel around socially.

140 Q What is his reputation among those people?

A It is very good. I haven't heard any detrimental remarks against Mr. Minkoff.

MR. DONOHUE: You may have the witness.

Cross Examination of Morris Forman

BY MR. WISE:

Q Have you talked with any of these people with whom you go around about the reputation of Mr. Minkoff, Mr. Forman? A No; I have no occasion to, sir.

Q Has anyone of these people or anyone else in the City of Washington ever talked with you about the reputation of Mr. Minkoff? A Yes, I think they have. One of the Committee Members of the Woodlawn Country Club called me.

Q Is he a member of the Woodlawn Country Club?

A No, sir; he has an application in.

Q Are you one of the members who investigates applicants? A No.

Q Someone called you about him, is that right, sir?

A Yes.

Q And what did that someone ask you, Mr. Forman?

A If I knew Mr. Minkoff and what I thought of him outside of business.

Q Anything said then—Were you asked about his character at that time? A Yes.

Q What response did you give? A I gave as good a recommendation as I could possibly give. I said I have known him for fourteen or fifteen years; that we travel socially quite a bit at his house and my house and the homes of friends, and as far as I was concerned I would be glad to have him as a member.

Q Do you know Meyer Siegel? A Yes.

141 Q Does he travel around with you? A No. I see him occasionally at parties, but I can't say I travel with him.

Q He was a former licensee of this Board, was he not, if you know—Mr. Meyer Siegel? A He was both in the retail and wholesale business.

Q Did Mr. Siegel ever ask you anything about Mr. Minkoff? A No.

Q Did you ever ask him anything about Mr. Minkoff? A No.

MR. MORAN: Is Mr. Minkoff a customer of yours?

A He surely is.

MR. WISE: How long has he been a customer of yours, Mr. Forman? A I guess he has been a customer of ours since I have been in the whisky business and probably a customer of my father since he has been in business.

Q Is he a heavy or light purchaser of your products?

A I would say a good customer.

Q Did there come a time when you learned of the indictment against Mr. Minkoff? A Yes.

Q How did you learn that? A By the newspaper.

Q When you read it did you have occasion to talk to Mr. Minkoff about it? A No, sir.

Q Did you call him or phone? A No.

Q Did you see Mr. Minkoff after that? A Yes, I did.

Q That indictment was returned according to record in August, 1950. How many times to your best recollection have you had occasion to see Mr. Minkoff socially and in a business way to see him since that time?

142 A Oh, I suppose I have seen him in a business way once a month and I have seen him socially half a dozen and maybe as much as nine times.

Q During that period is it your testimony when you saw Mr. Minkoff socially you did not ask him anything about this indictment? A No.

Q Is it your testimony no one in your presence asked him anything about this indictment? A No, sir.

Q I believe you mean "yes" to the question? A That is right.

Q Thank you. I don't want to confuse you. I want to keep the record straight.—Did you ever make any inquiries of anyone to ascertain the truth or falsity of this charge against him? A No, sir, I did not.

Q Did there come a time when you learned about Mr. Minkoff having given the Federal Government a thousand dollars in settlement of this criminal liability? A No, I did not.

Q You heard me talk about that a little while ago? A Yes; that is the first time I heard it.

Q That was the first time you heard of it? A Yes.

Q Having heard that testimony, knowing this criminal liability was settled for one thousand dollars by Mr. Minkoff, does that cause you to change your opinion

about his reputation in any way, sir? A No, sir, it has not.

MR. WISE: Thank you.

MR. DONOHUE: Thank you. May these witnesses be excused?

MR. PAYNE: Thank you. You may be excused.

MR. DONOHUE: That concludes the character witnesses as of now.

143 Whereupon Mr. Hyman Minkoff is called to the stand for further cross-examination by Mr. Wise.

Re-Cross Examination of Hyman J. Minkoff

BY MR. WISE:

Q Mr. Minkoff, you heard Mr. Gill testify yesterday?

A Yes.

Q And did you hear him testify that the only record he found made by you between the period 1948 and 1950 were the records of sale made by you to one Leard Evander Lisk? A Yes. I would like to ask—I don't know if it was 1947, from 1947 to 1949. You said now from 1948 to 1950. His testimony yesterday I thought he said November, 1947 to 1949.

MR. WISE: What I have done here, to bring this testimony up to date I have had a transcript made of the last page of testimony to bring me up to date and I have gone from 1948 to 1950 in this matter, and I asked the witness whether he heard Mr. Gill testify to that, that the only entry of sales made during that period by him were to Leard Evander Lisk.

MR. DONOHUE: I wouldn't want to challenge the record. That doesn't jive with what my notes said he said. My notes said he examined the reports to see if any report was made between the 1st of July, 1947 and the 1st of February, 1950, and that the only records he found were sales made to Lisk on the 23rd, 21st, and 22nd of July, 1949, and a sale on the 9th of February, 1948,

to a man named "Huff", which, I thought he said, had been reversed—it was in the (a) instead of the (b).

MR. WISE: The record will show for itself. I am trying to bring it up from where we left off last night. I had a page and a half transcribed for my benefit, to bring it up to date. Now, Mr. Minkoff, who keeps the records at your place of business? A It has been changed during those period of years.

Q Yes. I will ask you specifically, who kept the records for the year, during the month of July, 1949? A I could not tell you unless I saw the record. I have had four or five people keep the records and I don't know who kept it.

Q I show you this and ask if that will refresh
144 your recollection? A Yes; I think this was a clerk by the name of Chester Manoff.

Q Is he still in your employ? A No, he is not.

Q Let me ask you, Mr. Minkoff, do you know how this record is prepared? A What do you mean by that? You mean how it is kept?

Q When you make a sale of five gallons or more of beverages to the same person at the same time a record is kept in your Form 52(a), is it not? A That is correct.

Q Of that sale? A That is right; but may I explain that. Due to all of this bookkeeping the Alcohol Tax Unit in keeping these records have come to the point that they have come to simplifying the record in the last year. In other words, instead of entering all wholesale purchases whereby you had the purchases from the wholesale dealer all in the book, it has all been eliminated so that all that is entered now is the wholesale sale made to a purchaser, because it was such a bookkeeping problem that the Alcohol Board saw fit to eliminate ninety per cent of that bookkeeping.

Q When your clerk prepares a Form 52(b) or Form 52(a) a recapitulation is made on the Form 338 sheet for the Treasury Department? A Yes.

Q That Form 338 is then appended to the Forms 52(a) and 52(b) and certified to and signed by you and sworn to before a notary public—is that correct? A That is correct.

Q Now, when you swear to these forms, do you examine to see if they are correct? A Sometimes. Sometimes I don't. I mean by that it was always just a matter of form. I mean by that I swear to all those statements, but, as I say, I might not scrutinize or examine them too closely.

145 Q I will show you six pieces of paper and ask you if you can identify them? A Yes, I can identify them.

Q What are they? A The records from the Acme Liquor Supply of incoming and outgoing liquor.

Q They are the Forms 52(a) and 52(b), is that right, sir? A Yes.

Q Now, this is for the month of July, 1949, is that right, sir? A That is right.

Q Will you tell me specifically whether before you swore to this Form 338 and appended it to these Forms 52 and signed them before a notary public if you scrutinized and examined and checked those forms in any way? A These forms I did not. I didn't swear to them. As you see, I did not sign for them—is that correct?

MR. DONOHUE: May I see it please?

(Mr. Donohue shown forms in question.)

THE WITNESS: Do you see my signature there?

MR. WISE: I just asked you the question. I asked you the question.

THE WITNESS: I did not sign it.

MR. WISE: Is Mr. Leon P. Minkoff a partner of yours? A No, he is not.

Q What is his capacity with you? A He is manager of the store.

Q And, as manager, have you delegated to him the right to subscribe and swear to these forms? A Yes, I have.

Q Do you supervise his activities in any way? A On some occasions, yes, I would say.

Q MR. MORAN: In whose name is the wholesaler's tax stamp? A Mine, but may I explain? You apply to the Federal Government for it, just as you apply for a
managership. You apply to them for a right that
146 your manager has the legal right or whatever the right is to keep these forms and sign them.

Q Does his name appear on there at all? A Yes. That is why I said I didn't sign it.

MR. WISE: I will introduce this at the proper time, Mr. Moran.—You sign and swear and subscribe to some of these do you not? A That is correct, sir. Where my signature appears I have signed them.

Q Will you tell the Board, please, Mr. Minkoff, whether you at any time have anything to do with the making of entries in either the Forms 52(a) or 52(b)? A Yes, at times I make entries in Forms 52(a) and 52(b). I haven't recently.

Q Will you again look at this piece of paper and tell me, please, whether you made any of those entries, whether any are in your handwriting or whether they are in Leon Minkoff's handwriting? A I will repeat what I said yesterday. I entered this sale. That is my handwriting. I also said I had a clerk working for me who entered the rest of the sales, and he did not enter "Transferred to Retail Department."

Q Let me repeat it some more if I choose to ask the question. Is it your testimony, Mr. Minkoff, that the only entry appearing on this Form 52(b) on page 2, Form 52(b) for the month of July, 1949, was in your handwriting, is the sale to Evander Lisk, Junior? A Yes, sir.

Q Have you examined the entire form? A No.

Q Let's examine it first before we answer the questions. A That looks like it.

Q What? A That looks like it. That is correct.

Q That is the only one? A Yes, sir.

147 Q All right. Will you take this pencil, please, and mark with a little "x" just which of these entries are yours on this entire Form 52(b) and 52(a) for the month of July, which I will offer at the proper time.

THE WITNESS: You want me to show it in 52(b) too?

MR. WISE: If you please.

(Mr. Minkoff makes marks as requested.)

MR. WISE: Mr. Donohue, if you care to follow me for the record, at this time I offer this as Government's Exhibit #4 for identification. Mr. Minkoff, if you will be good enough to confirm what I am about to read in the record—The witness has indicated that the only handwriting of his appearing on Form 52(b) for the month of July appears on page 2, being entries dated July 23, 1949 to Evander Lisk, Junior, of 22 cases—is that right, sir?

THE WITNESS: Yes.

MR. WISE: Of liquor. That on his Form 52(a) there appears in the witness' handwriting on the same date, July 23, 1949, on page 2, an entry of receipt by the Acme Liquor Supply Company of 22 cases of liquor. Is that right, Mr. Witness? A That is right.

MR. MORAN: This is sort of handled on double entry bookkeeping.

THE WITNESS: That is right.

MR. WISE: That is what I would think. I am going to find out. I will find out from some of the Treasury men. Mr. Minkoff, do you have, or did you have, during the month of July, 1949, in your store a system where you made a sale and received so much money that you

entered that sale on something other than the Form 52(b)?
A No.

Q So that this Form 52(b), sir, is your original entry, is that right, sir? A That is correct, beside giving the man a bill, an invoice for the merchandise.

148 Q Yes, sir. So that if you made a sale of more than five gallons you would not make that entry on any independent sheet, but would make it direct to Form 52(b), is that right, sir? A That is right.

Q And you would write it in your own handwriting like on the 23rd of July, 1949? A In this case I did, yes.

Q Now, how soon after the sale of July 23, 1949, to Evander Lisk did you make this entry on your Form 52(b)? A I don't recall.

Q How do you balance your cash at the end of the day?

MR. DONOHUE: I object, if the Board please. I think we are going far afield.

MR. WISE: I have a right to go into the record. It is check and balance. I have worked in banks and know something about accounting.

MR. DONOHUE: I withdraw the objection.

MR. WISE: If someone comes in and pays you thirteen or fourteen hundred dollars for several cases of whisky—

THE WITNESS: Yes.

MR. WISE: Now, do you balance that against your Form 52(b) or do you balance against some independent auxiliary record that you keep? A No, sir, we don't balance it against any record. It is used as a day's business.

Q Do you keep a cash book? A Yes, the accountant keeps it.

Q When you make a sale of this type, of five gallons or more to the same person, is that entry made in the

cash book? A No. By that I mean it is run in altogether with the other business.

Q I see. You ring it up on your cash register and you show a total at the end of the day on the register?

A Well, it could run into one day or two days
149 business. In other words, I may cut my register off at noon or in the morning or at night, whenever I get around to it. There is no special day. It may hold from Monday or Tuesday at noon, and it all depends when the sale is that it may run into two days.

Q If you are balancing business for the 23rd day of July, 1949, the sales—

THE WITNESS: Yes.

Q —you have on a cash book or on your tape in your cash register certain receipts do you not for less than five gallons, for individual bottles you sell? A I will be frank with you. The register won't ring up over one hundred dollars, so you have to ring up ninety-nine dollars at a time.

Q Yes; but for individual bottles that you sell you ring those up on the register? A That is correct.

Q Then when you sell in large quantities of five gallons or more you ring it up on the register whether you have to punch the one hundred dollars thirteen or fourteen times or not? A That is correct.

Q So at the end of the day you have a certain amount on the register? A Yes.

Q So then do you take into consideration and check these twenty-two cases that were sold and are set forth on this 52(b) when you check your day's business to arrive at a balance? A I don't check it against that. I check on cash on hand and what is on the register. If I do fifteen hundred dollars or two thousand dollars in a day I check the register against the amount of the rings.

Q Do you identify each day's cash receipts for book-keeping purposes? A Yes.

Q So that your register for July 23, 1949, would show, would it not, the receipt of the sale of these twenty-
150 two cases in addition to the other sales you made?

A It would be all included there, it wouldn't show a separation. In other words, I don't know what date that broke. If it was a Saturday, a day that you would take in three or four thousand dollars, I couldn't tell you which was the thirteen hundred dollars I took in for the sale or which we did over the counter. There would be no way to break that.

MR. MORAN: You don't keep your cash register tape? A No; we keep the total of the tape.

MR. WISE: So that the only record you have then of sales of five gallons or more to one person would be on the Form 52(b)? A That is correct.

Q And is that entered daily? A What is entered daily?

Q The entries on the 52(b)? A As a rule it is, but in that case there seems to be something mixed up with it—I don't know what it was. The 21st, 22nd and 23rd is mixed up. Whether the clerk didn't do something and I entered it and he had to come back and finish up the entries—that is what it looks like to me.

Q Now, your clerk made entries on page 2 of this 52(b) for July, starting with July 19th, at the top of the page, and going down to the bottom of the page, did he not? A I can't—

Q Would you like to see it? A Yes. I can't keep up with you. Ask the question.

Q Your clerk, starting on July 19th, started at the top of the page—no—I will take that back—Let's look at another page here. This is a little out of order, if the Board please. I am not going to unclip this exhibit, but page 2 is on top, page 1 next, and is followed by page 3. Look at page 1, Mr. Minkoff. A Yes.

Q That starts with July 1st, does it not? A That is correct.

Q And goes down to July 19th? A That is correct.

151 Q You say those entries were made by your clerk? A Yes.

Q Now, at the top of the next page, page 2, we are still on July 19th? A That is correct.

Q The very last entry on page 2 is July 22nd, and on page 3, the top of the page, we are still on July 22nd for three times are we not? A That is correct.

Q Yet, fourteen lines from the bottom of the page there are these four entries, dated July 23rd, to Evander Lisk, Jr., following July 21st, and then following the 23rd we have these one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen entries on July 21st and 22nd—that is right isn't it? A I just explained it.

Q Answer that. A Yes, and I would like to explain it. That is true, just finished explaining that. In entering this sale, and it was made on the 23rd, my clerk had not had the bills up to date, and I just entered it and let him go ahead and finish up the rest of the sales.

Q Aren't entries made day to day? A They should be, but at times we get behind, a day or two behind.

Q Would that also, Mr. Minkoff, be true of the receipts of liquor shown on your 52(a) form? A Yes, it would, because the transaction was made the same day.

Q Yet, you do not have any independent cash slips from which these entries are made?

MR. DONOHUE: I object to the question. He said he hasn't. I don't think there is any duty that he has to have it.

MR. WISE: So that if there are no cash slips kept from sales and receipts from day to day of whisky—there was a space left on this Form 52(a) and 52(b)

152 —why were these spaces left? A What spaces?

Q Between the 21st of July to the 23rd? A What do you mean?

MR. PAYNE: Just answer his question.

A I don't understand his question.

MR. DONOHUE: Neither do I.

MR. WISE: I am trying to make it clear. If you are working on the 21st of July business, then there are one, two, three, four days entered between the 21st of July and the 21st of July following; there must have been spaces left. A I say there was no space left. After this entry was made I made this entry, then these entries were made. (Witness indicated while answering the entries he was referring to.)

Q I will ask you another one. Do you remember Mr. Sullivan who just testified here yesterday? A Yes.

Q Do you remember he testified that he made an examination of your records on July 26, 1949? A Yes.

Q Do you remember that he testified that on July 26, 1949, when he visited your place and made an examination of your records that the only entry since December 10, 1948, up until the time of his visit of inspection on July 26, 1949, was on July 23, 1949, the sale to Lisk of twenty-two cases? A Yes.

Q You remember his testimony don't you? A Yes.

Q If that is a fact, how do you account for these entries coming in on July 21st, following the 23rd, which did not appear as of July 26th, when Mr. Sullivan was there?

MR. DONOHUE: That wasn't Mr. Sullivan's testimony.

MR. WISE: I submit it was. We have the record to prove it. He said he was there—

MR. DONOHUE: He said the only wholesale sale.

153 MR. WISE: Was twenty-two cases to Evander Lisk.

MR. DONOHUE: There isn't any other on that book either.

MR. WISE: And there are other sales here following, dated July 21, 1949, allegedly sold to Evander Lisk, which Mr. Sullivan testified did not appear on the record as late as July 26th—five days after the alleged entry was made.

THE WITNESS: I tried to explain to you that in the keeping of these records the word "transferred to Retail Department" should have appeared here again. It did not. I did not make this sale to Evander Lisk and it didn't mean to be made to him. Definitely this sale wasn't made to him. He admitted it. I say that is the only sale I made to him. This is a receipt of merchandise which came into my premises. If you want to check it we will pull the invoices from these companies which is purchases made.

Q Do you want to say the following entries following July 23rd are receipts not sales? A That is correct.

MR. MORAN: That seems a pretty good proffer there, that he would pull invoices which would establish the fact they were receipts and not sales.

MR. DONOHUE: That is a good idea.

THE WITNESS: If he will give the dates.

MR. DONOHUE: 21st of July.

MR. WISE: Why weren't these so-called receipts made as late as July 26th—why weren't they in the books when Mr. Sullivan came in? A They may have been—I don't know. He said that was the wholesale sale which he saw there. He didn't say anything about received merchandise.

MR. PAYNE: Do you put receipts and sales on the same page? A Yes, sir, you do. That was what was so confusing about keeping those books.

154 Q But you are supposed to keep receipts from wholesalers on the 52(a)? A Yes, but you transfer it to 52(b) before you can sell as a wholesale sale.

MR. WISE: I am going to ask you, Mr. Minkoff, you can use any one you want, either your duplicates or the originals—Oh, at this point, if the Board please, I would like to introduce as Government's Exhibit 4 this record about which we have just been talking, Form 52(a) and (b), so that there will be no confusion about it. I wish, Mr. Minkoff, you would take either your duplicate records or these original records—you can examine them to see if they are the original—and make a thorough examination of them and tell the Board whether you see any sales recorded to either Mr. Pridemore or Mr. Short, who testified about the large amount of sales they purchased from you during the time of the several visits they made to you?

MR. DONOHUE: He answered that question yesterday.

THE WITNESS: I said I made no sales to either of those parties.

MR. MORAN: And if you made no such sale there would be no such record on the 52(a) and (b)? A That is right.

MR. MORAN: We are all trying to get at this right. I think if you would try to cooperate in answering everything would be all right.

MR. WISE: Why do you say that, Mr. Minkoff, when some of these Forms 52(a) and (b) were certified to the Bureau of Internal Revenue by Mr. Leon Minkoff? A You asked me the question and you asked me did I sell any and I said I did not.

Q I will put it this way. Did your store—I will ask you to examine these Forms 52(a) and (b) and tell the Board whether your store, for which you hold a license, made any sales to either Mr. Pridemore or Mr. Short, about which they testified yesterday? A Not to my knowing—not to my ability.

Q There are times when you are not in the
155 store, that is a fact, isn't it? A That is correct.

Q Mr. Leon Minkoff certified the Government's
Exhibit about which we were talking a while ago? A
That is right.

Q You have shown to the Board and have told the
Board that the only entries made by you during this
month in July, 1949, were these twenty-two cases that
you sold or that were sold to Evander Lisk and the re-
ceipt of those cases on your Form 52, is that right? A
That is correct.

* * * *

158 MR. DONOHUE: I would like to have Mr.
George Morris Fay's letter written into the record.

MR. WISE: I have no objection. I think we will
start with the letter dated October 13, 1950 first, then
read the other two.

MR. ROEHRER: (Reading the letter)—

"October 13, 1950

"The Attorney General
Department of Justice
Washington, D. C.

159 RE: United States v. Hyman J. Minkoff and
Leon P. Minkoff—Criminal No. 1262-50
Violation Sec. 2857a, Title 26, U.S.C.

"Sir:

I am enclosing herewith a letter dated Oct. 12, 1950,
addressed to this office from James E. Markham, Esquire,
attorney for Hyman J. Minkoff and Leon P. Minkoff, to-
gether with a certified check payable to the order of the
Treasury of United States in the sum of \$1000, which re-
lates to an offer in compromise of criminal liability for
alleged violations of the Internal Revenue Laws by Hy-
man J. Minkoff and Leon P. Minkoff, who are under in-

dictment in this district in Criminal Case No. 1262-50, in which they are charged with violations of Sec. 2857a, Title 26, United States Code (failure of wholesale liquor dealer to keep proper records).

"You will find enclosed a copy of this indictment, together with a copy of the report of the Alcohol Tax Unit of the Treasury Department, which sets forth the specific violations.

"I recommend that the offer in compromise be accepted, as I feel this is the type of case in which an offer to compromise the criminal liability is proper, in view of the fact that the Federal government has not been defrauded, as all taxes and license fees, both Federal and local, have been paid by the defendants, and the failure to keep proper records was not with the intent to defraud the Government of taxes or fees.

"Accordingly, I am submitting the offer for your consideration. If the offer is accepted, authority is hereby requested to dismiss the indictment.

Respectfully,

/s/ George Morris Fay
United States Attorney"

November 2, 1950

"George Morris Fay, Esquire
U. S. Attorney
Washington 1, D. C.

RE: United States v. Hyman J. Minkoff and
Leon P. Minkoff, T/A Acme Liquor Supply Company, Washington, D. C. ATU
case Report DC-1822 (Liquor). Your Ref:
JCC: jtm C1262-50

"Dear Mr. Fay:

"You are informed that the offer of \$1000 submitted through your office by the above named individuals and

company in compromise of criminal liability incurred under the internal revenue liquor laws (Sec. 2857, IRC, Regs. 20, etc.), has been accepted conditioned upon payment of costs. It is noted that taxes, license fees, etc., have been paid. Please notify the proponents or their attorney, James H. Markham, Esq., Shoreham Building, Washington 5, D. C., of the Department's action on the subject offer.

“You are authorized to cause an order of nolle prosequi to be entered in Criminal No. 1262-50 upon compliance by the proponents with the aforementioned conditions.

Respectfully,

For the Attorney General
/s/ James M. McInerney,
Assistant Attorney General”

* * * *

161 *Direct Examination of Milton S. Kronheim*

BY MR. DONOHUE:

Q Will you state your full name? A Milton S. Kronheim.

Q Where do you live? A 2480 16th Street, N. W.

Q What is your business or occupation? A Wholesale liquor business.

Q How long have you been so engaged? A Since repeal.

Q Do you know Mr. Minkoff? A I do.

Q How long have you known him? A Ever since repeal.

Q Do you know other people in this community who know Mr. Minkoff? A I do.

Q Do you know what Mr. Minkoff's reputation is in this community among the people you know who know him? A I do.

Q What is their opinion? A Excellent.

MR. DONOHUE: You may have the witness.

Cross Examination of Milton S. Kronheim

BY MR. WISE:

Q Mr. Kronheim, Mr. Minkoff has been a customer of yours? A A very good customer; a very valued customer.

162 Q Is he a purchaser of a lot of merchandise or a small amount? A I don't know his purchase record but I know he is a good customer of ours.

Q Have you talked with other people in the community about Mr. Minkoff? A I would say I have mingled with people, and I know him, and—

Q And you never heard anything derogatory? A No.

Q Are you familiar with the fact Mr. Minkoff was indicted by a Federal Grand Jury last August? A On this case. The only time I have heard of him being indicted is this case.

Q This is the outgrowth of the indictment. How did you learn about it? A I think I read of it in the paper.

Q Since reading about it have you had occasion to talk to Mr. Minkoff about it? A Not until a couple of days ago.

Q And did you ask him anything about it, sir? A No.

Q Did he tell you anything about it? A No, I haven't discussed it with him much at all.

Q And, among the people with whom you have associated who know Mr. Minkoff, have they ever mentioned anything about this indictment to you? A No; except the general comment that one of the men in the industry was in trouble. I haven't heard any details about the indictment of the case.

Q Have you learned, Mr. Kronheim, that in order to compromise this criminal liability under this indictment that Mr. Minkoff has recently given to the Federal Government his check for one thousand dollars in full settlement of it? A Well, I know it; I think that generally it is known. I have heard that he has.

163 Q And since you received information about the payment of this one thousand dollar settlement has that caused you to change your opinion about Mr. Minkoff's character in any way? A No. I might add, if I might, that Mr. Eig, who was indicted the same way, has recently been decorated by the Pope; so I don't think it hurts his standing in the community or the world.

MR. WISE: Thank you.

MR. MORAN: Mr. Kronheim, I have been on the Board over three years, have you ever appeared before the Board before in behalf of a licensee? A No.

Q How did you come today? A Because Mr. Donohue called me and I said I would like to testify.

MR. PAYNE: As a friend.

A Yes, as a good customer and friend, as I know him.

* * *

* * * I say to the Board that I now offer to prove to the satisfaction of the Board that in the year 1944 a number of licensees holding the same kind of license as this
167 respondent were indicted for the same alleged violations of the same statute. I offer to prove that some time in February of 1945 that all of those indictments were compromised by the payment of a sum of money, which ranged from a minimum of a thousand dollars to a maximum of ten thousand dollars. I offer to prove to the Board, from the Board's own records, that this Board knew, had knowledge of those indictments, in consequence of which this Board procured from one, if not from all, of those licensees the signature to a waiver by the terms of which they agree that they would waive

the defense in 1946 if a charge was brought against them upon the same basis as the indictment upon the license which expired January 31, 1945. The Board has denied me a right to issue a subpoena to call those persons before the Board to prove those facts. I offer it as proof. I say the Board has no right to say that for this respondent to have been indicted for violation of Section 2857(a) and to have accepted a compromise is to make him a person of not good character when there is pending before this Board the applications for licenses from twelve or fifteen people who are in exactly the same position. Having made my offer of proof, I renew my motion for the names made by a letter by Mrs. Mason to the United States Attorney in which she asked for the disposition of the pending cases against the licensees.

(Board Members confer)

MR. PAYNE: Mr. Wise, do you have any remarks on that?

MR. WISE: If the Board please, I understood the motion has been denied at least twice, and now Mr. Donohue is supposed to be making an offer of proof. I have never known of denying a motion for offer of proof as being repeated. I understand it was denied.

MR. DONOHUE: I renew the motion.

(Board Members confer)

MR. PAYNE: The motion is denied.

* * * *

169 MR. PAYNE: We are continuing the matter of the application of Hyman J. Minkoff for a Retailer's Class "A" license for 1951, continuing the hearing from January 24th. Mr. Sullivan has been recalled to the stand. You have previously testified and were sworn as a witness?

MR. SULLIVAN: Yes.

MR. PAYNE: You are Richard C. Sullivan, an Inspector of this Board? A Yes.

MR. MORAN: In 1949 you had occasion to go to Mr. Minkoff's store and inspect his 52(a) and 52(b) book?

A The 52(b) only.

Q Would you turn to the 52(b) book and look at the entries of July 23, 1949?

(Mr. Sullivan looks at entries in book)

Q Mr. Sullivan, as I recall, when you looked at the book there were white sheets in there were there not, or yellow sheets? A I am pretty sure the white sheet.

Q But I am pretty sure it is a duplicate of the white sheet which has been forwarded to the Federal authorities. I want to ask you, Mr. Sullivan, I notice an entry on the 23rd to Evander Lisk—Do you notice that entry?

A That is the name I took off the book, yes.

Q Was that the last entry you saw on the page that date, if you recall? A I was there the 26th.

Q Was any other entry on that page besides that one? Was that the last entry? A I am not sure. That is the only thing I reported that was in the book. Now,
170 I would have taken up to the 26th, I would assume, because that is the day I went up there to check the book.

Q Did you notice this entry following the 23rd, the 21st and 22nd? A No, I did not.

Q What would those entries indicate to you, Mr. Sullivan? A This is merchandise that has been disposed of or sold out of the premises which is more than five gallons, which is, I understand, Internal Revenue law, has to be entered in the 52(b) book.

Q Looking at this entry of the 23rd and entries following thereafter, what does that indicate to you? A There are no entries here after it, if that is what you mean. There are no names in here.

Q What does that indicate to you? A Nothing was sold, nothing more than five gallons.

Q What does it indicate—Why were the entries made if nothing was sold? A If I understand you correctly there are entries here.

Q Which indicates what? A That there was no sales made.

MRS. MASON: In other words, you didn't see anything on that book after the 23rd when you went there the 26th?

MR. DONOHUE: That isn't what he said.

THE WITNESS: It was the white sheet I took it off of.

MR. MORAN: This is a duplicate? A Yes.

Q You have got the entry of Lisk on the 23rd of the month and following that his entries of the 21st and 22nd. What does the entry of the 23rd indicate to you of the purchase by Lisk? A That a sale was made.

Q Of how many cases? A Well, I remember—

Q No; look at the book. A Oh, twenty-two.

171 Q On the last line after the 21st what does that indicate to you? A Well, this would indicate the way it is written here, "Park and Tilford Distributing Company", that this is merchandise taken out of the wholesale department and place in the retail department of the store, the Acme.

Q Because of that you made no copy or report of that if it was on there? A That is right.

MR. WISE: I believe the witness already stated on July 26, 1949, when he visited these premises he saw no entries made after the 23rd of July and then saw only twenty-two cases sold to Evander Lisk at that time.

MR. MORAN: That is right. That is what he sees now.

MR. PAYNE: Mr. Sullivan, if you can remember, when you saw this book on July 26th were there any entries of any sort in the book following those entries of the Lisk sale of the 23rd or was the rest of that page

blank? A I really don't remember. I believe that that is about as far down as it went, I am not certain, because in checking back with the book here, if my memory serves me right. I was told to check several months. I went as far as December, 1948. We just go right up the page to see if we find anything. We go page after page. I can't say definitely—I would say from the way I wrote my report that was the end of the story on the 23rd.

MR. MORAN: Then the bottom of that page was blank after that entry? A I would say it with reserve—I am almost sure; I would say that it was.

MR. WISE: Would it help if you checked your report? A Let me see it. (Mr. Sullivan looks at his report.)—May I ask a question to clarify this before I answer?

MR. WISE: Mr. Moran has asked it.

THE WITNESS: Is that in reference to these
172 over here you speak of—Was the question were these dates here or not?

MR. MORAN: Yes.

A As far as I can recall writing the report on the 26th the only entry from December, 1948 was July 23rd—I can't say definitely. I am almost sure. We take the name off like we took this one off. It was the white paper I took it off of.

Q You were looking for sales, not purchases? A Yes, that is right.

Q According to your testimony the entries after Lisk's name appear to you to be purchases rather than a sale, is that right?

MR. WISE: He hasn't said he saw any entries after July 23rd.

THE WITNESS: This entry here would be.

MR. MORAN: What date is on it? A The 21st.

Q And it follows the 23rd entry? A Yes.

Q What does it indicate? A That Park and Tilford

had been removed from the wholesale stock and placed in the stock of Acme Liquor for sale.

MR. MORAN: No further questions.

MR. WISE: As I understand your testimony, these entries of July 21, 1949, following the entries of July 23rd, were not on the original white sheets of Form 52(b) when you made your examination on July 26th? A To the best of my recollection and memory yes, that is right.

MR. PAYNE: So that then the rest of that page after the Lisk entries would have been blank of any entries? A That is what I think.

Q But you can't be sure? A Yes. I would like to clarify myself. We go up and check the name. I would have recorded the names before or after that entry on the 23rd of July.

Q You were looking for sales? A Yes; stuff in the 52(b), which means it has been disposed of in more than five gallons, and has to be entered.

* * * *

182 MR. MORAN: I noticed in the argument you brought out the fact that these bootleggers came to Washington from North Carolina with North Carolina tags on their cars, and apparently were known to the licensee to be bootleggers. Is it your contention, Mr. Wise, that selling to a known bootlegger operating in North Carolina is a violation in the District?

MR. WISE: It is not. This Board has no control over anything that goes on in North Carolina. This act goes only to boundaries of the District of Columbia, and once a sale is made and consummated, why that ends it. That, standing in and of itself, Mr. Moran, would not be a violation. My office has so construed that in a
183 written opinion and the Commissioners have approved that opinion.

No. 11,444
BRIEF FOR APPELLANT

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HYMAN MINKOFF, *Appellant*,

v.

ALAN W. PAYNE, ET AL., *Appellees*.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
For the
District of Columbia Circuit

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No. 11,444

STATEMENT OF QUESTIONS PRESENTED

1. Whether an order of the Alcoholic Beverage Control Board of the District of Columbia which denied a retail liquor dealer renewal of his license was supported by substantial evidence.

2. Whether the Board unlawfully discriminated against the licensee by singling him out for hearing from a larger group of simultaneous applicants in like circumstances and denying license renewal only to him.

3. Whether the Board improperly curtailed the licensee's right of cross-examination at the hearing on his application for renewal.

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,444

HYMAN MINKOFF, *Appellant*,
v.

ALAN W. PAYNE, ET AL., *Appellees*.

BRIEF FOR APPELLANT

Appeal from the United States District Court
for the District of Columbia

Jurisdictional Statement

This is an appeal from a summary judgment for appellees entered in the United States District Court for the District of Columbia, on May 20, 1952 (R. 30A-31A).¹

The notice of appeal to this Court was timely filed on May 29, 1952 (R. 31A).

The complaint (R. 2A-11A), filed on February 1, 1951, charged that the refusal of the Alcoholic Beverage Control Board of the District of Columbia ("the Board") to renew appellant's retailer liquor license which he had held continuously since 1937 was unlawfully "arbitrary

¹ The reference "R" is to the Joint Appendix, filed with this Brief.

and capricious, unreasonable, [and] in violation of . . . [appellant's] constitutional right of due process under the law and of his constitutional right to equal treatment under the law" (R. 7A); and sought an injunction which would restrain denial and compel issuance of the license renewal. The action is within the jurisdiction of the District Court. D. C. Code (1951 ed.), tit. 11, secs. 11-305, 11-306.

Jurisdiction of this appeal is granted by 28 U.S.C. 1291.

Statement of the Case

1. The Proceedings before the Board

In 1950, appellant was the holder of a retailer's liquor license, Class A, under the District of Columbia Alcoholic Beverage Control Act (D. C. Code (1951 ed.), tit. 25, secs. 25-101 seq.) (R. 3A). This license, first granted to appellant in 1937, had been renewed continuously, without question, from year to year thereafter (R. 3A, 93A). On December 10, 1950, just as he had done during each of the previous twelve years, appellant filed an application for renewal; on December 29, 1950, the application was called for protests, in accordance with statute (D. C. Code (1951 ed.), tit. 25, sec. 25-115(b)); no protests were noted; issuance of the renewal in normal course appeared certain (R. 3A).

At this point, on January 10, 1951, with appellant's license effective only until January 31, 1951, the Board directed him to appear "to show to the satisfaction of the Board that you are a person of good moral character and generally fit for the trust to be in you reposed for the issuance of such license", stating that it was "unable to satisfy itself" in those respects because it had been informed (1) that during the period from November 1947 through July 1949, appellant had made certain false and

fraudulent entries in his books, in violation of section 2857(a) of the Internal Revenue Code;² (2) that, as a consequence, he had been indicted; and (3) that, thereafter, the criminal action had been dismissed on payment of \$1,000 in compromise of the matter (R. 14A-15A).

The testimony, at the hearing which ensued, is conflicting in many respects; it is analyzed in some detail in our Argument (*infra*, pp. 17-27). The facts which are not in dispute are substantially as follows:

Appellant is a 38 year old citizen, born in the District of Columbia, resident here all his life, married and the father of two children (R. 93A). He has never been convicted of any breach of law (*ibid.*). Operating under the license he had held continuously since 1937, appellant has built up and now owns and operates a liquor business whose good will alone is worth some \$75,000. (R. 93A-94A). His reputation as a man of good character (as twelve highly reputable witnesses were unanimous in attesting) is excellent (R. 109A-147A, 161A-163A).

Sometime in 1949, the Board's inspectors had reported to it that appellant's books and records disclosed apparent irregularities suggesting that he might have made sales of liquor in quantities larger than five gallons and failed to record them as required by the Internal Revenue Code provisions (R. 6A, 83A-85A). The Board did not ascribe much significance to these reports; for, when, shortly thereafter, in January, 1950, appellant's license came up for renewal, the Board renewed the license without question as it had done from year to year since 1937 (R. 3A, 93A).

² The provisions of section 2857(a) appear *infra*, p. 9-10. In short, they require liquor dealers to keep accurate daily records of individual sales of liquor in quantities of five wine-gallons or more, under penalty of fine and imprisonment for refusal or failure to do so.

In August, 1950, an indictment was returned against appellant and his brother for alleged violations of section 2857(a) of the Internal Revenue Code. After discussions with the federal authorities and on advice of counsel, appellant paid \$1,000 to the federal Government in compromise of this charge, and in October 1950, on the recommendations of the Attorney General and the United States Attorney, the indictment was dismissed by the District Court. (R. 5A, 159A-161A).

Twelve other retailer liquor licensees had previously also been indicted for violations of the very same provisions of section 2857(a) of the Internal Revenue Code, several of them more than once. (R. 5A-6A, 32A-34A, 87A-88A, 163A-164A). They too had compromised their indictments, the sums paid to the Government ranging from \$1,000 to \$10,000. (*ibid.*). Many of these twelve other licensees were applicants for license renewal before the Board at the very time appellant's application for renewal was before it. And the Board was fully aware that such indictments had been returned against and compromised by these other applicants (R. 87A).

But appellant was the only one who was directed to show cause why his license should not be renewed, and only in his case was renewal denied.

The remaining evidence is conflicting. Three witnesses produced by the Board's counsel, all of them admitted bootleggers illicitly engaged in running liquor into North Carolina, appeared in response to letters which appellee Payne, as Chairman of the Board, had sent to them outside the District, instructing them that the enclosed subpoena made it compulsory for them to attend; this notwithstanding the Board's limited authority to exercise its subpoena power only within the District. (D. C. Code, (1940 ed.), tit. 25, sec. 126) (R. 21A-22A). The bootleggers testified that they had made a number of purchases

in case-lots from appellant's store, during the period from November, 1947 through July, 1949. And two of them said that appellant had instructed them to telephone him if they were apprehended and had indicated that only in that event would he make entries of the sales on his records (R. 38A-67A *passim*).

Federal and District government officers then testified that official inspections of appellant's books had disclosed some properly noted entries of such sales in wholesale quantities, among them sales to one of the bootlegger witnesses; but that no entries appeared as to several sales about which the three bootleggers had testified; the officers not being able, of course, to state whether such latter sales had in fact been made (R. 80A-85A).

Relying on these accusations, appellant testified that he had made sales to only one of the witnesses and that those sales were, as he and the official inspectors pointed out, duly entered on his records (R. 94A-98A). He denied making any other sales to any of the three bootlegger witnesses (R. 98A-99A, 104A, 108A).

On this record, the Board, apparently relying on the testimony of the bootleggers and wholly disregarding that of appellant and the numerous witnesses on his behalf, handed down its adverse ruling (R. 15A-17A). It is noteworthy that although the Board had been informed of the alleged irregularities in appellant's books as far back as 1949 (R. 84A); although the indictment against him had been returned in the summer and dismissed in the fall of 1950 (R. 5A); and although his application for license renewal had been filed as early as December 10, 1950 (R. 3A); the Board did not schedule the hearing on his application until January 23, 1951, did not announce its decision (a one-page typewritten statement) until the late afternoon of January 31, 1951, the very day when plaintiff's prior license expired, and did not advise

appellant's counsel of its decision until after 4 P.M. o'clock on that day (R. 7A).

A majority of the three-man Board found that appellant had "willfully and fraudulently" failed to make certain entries in his books and records, during the period from November 1947 through July 1949, in violation of section 2857(a) of the Internal Revenue Code; that appellant, during that period, had "willfully and fraudulently" conspired with certain bootleggers operating in North Carolina and agreed with them not to make certain entries in his books and records under certain circumstances; and that, pursuant to that agreement, appellant thereafter, on numerous occasions, had sold and delivered alcoholic liquor in excess of five wine-gallon quantities to those bootleggers and "willfully and fraudulently failed and refused to make entries of such sales in his business books and records as required" by section 2857(a) of the Internal Revenue Code (R. 16A-17A). The majority concluded that it was "unable to satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed." (R. 17A).

The third member of the Board, James O'D. Moran, dissented (R. 17A-20A), stating in part, the following (R. 18A-20A):

"By requiring the licensee to answer for certain conduct by an order to show cause under Section 14(a-1), the Board has been limited in its action and the licensee has been deprived of a business stated to be worth \$75,000 without the right of appeal to the Commissioners, which right would have been granted to him had he been cited under Section 17 for violations of the Alcoholic Beverage Control Act.

"Since I have been a member of the Board, all revocations of Retailer Class "A" Licenses, ordered by the Board under Section 17 of the Act, have been modified by the Commissioners of the District of Columbia.

* * * *

"By the very nature of the bootleggers' transactions with the licensee, their testimony should be considered by the Board with due care and caution. On such testimony it is impossible for me to brand this licensee as having an immoral character.

* * * *

". . . I do not believe that the Board should now further penalize him by refusing him a license, thus destroying his business for a matter which the Federal Government has already secured full satisfaction.

"The most that can be said is that the licensee may have failed to make certain technical entries in his Federal reports; this is not such heinous conduct on his part as to warrant the Board in finding that he is not 'of good moral character and generally fit for the trust to be in him reposed.' It is my opinion, therefore, that the application for a 1951 license should be approved."

2. *The Proceedings in the District Court.*

The complaint was filed in the District Court on the morning of February 1, 1951, the day following the announcement of the Board's ruling. That court promptly entered a temporary order, restraining appellees "from in any manner interfering with the continuance and active conduct by [appellant] of his Retail Class 'A' beverage business," and on February 8, 1951, after hearing, extended that restraint pending final determination there. (R. 12A).

Thereafter, appellees filed a motion to dismiss, or, in the alternative, for summary judgment. (R. 12A-13A).

On May 20, 1952 appellees' motion was granted, and summary judgment for appellees entered (R. 30A-31A). In granting the motion, the lower court held, first, that the administrative record "discloses evidence upon which the Board could reasonably reach a conclusion that there was . . . a conspiracy" between appellant and the North

Carolina bootleggers pursuant to which appellant had undertaken to record the sales made to them (R. 29A); and that, in view of such evidence, "it is not for this Court to weigh the evidence and determine what its conclusion would have been" (*ibid*). Then, addressing itself to appellant's contention that he had been unlawfully discriminated against by the Board when it instituted show cause proceedings and denied him license renewal while quite ignoring the fact that simultaneous applicants for license renewal had likewise been indicted for violations of the same Internal Revenue Code section: the court held that "no showing has been made that any conspiracy such as the Board found in the instant case, was present with respect to the instances mentioned" (*ibid*). The court concluded, therefore, that it could not "come to the conclusion that the action of the Board was arbitrary, capricious, discriminatory, or unsupported by substantial evidence." (R. 30A).

This appeal is taken from the summary judgment granted to appellees.

Statutes Involved

District of Columbia Code (1951 ed.), tit. 25, sec. 25-106, reads, in part, as follows:

"The right, power and jurisdiction to issue, transfer, revoke, and suspend all licenses under this chapter shall be vested solely in the [Alcoholic Beverage Control] Board, and the action of the Board on any question of fact shall be final and conclusive . . ."

District of Columbia Code (1951 ed.), tit. 25, sec. 25-115(a), reads, in part, as follows:

". . . Before a license is issued the Board shall satisfy itself:

- (1) That the applicant, if an individual, or, if a partnership, each of the members of the partnership,

... is of good moral character and generally fit for the trust to be in him reposed ..."

Section 2857(a) of the Internal Revenue Code, 26 U.S.C.A. 2857(a), reads as follows:

"(a) Requirements. Every rectifier and every wholesale liquor dealer who sells, or offers for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time shall keep daily, at his place of business covered by his special tax stamp, a record of distilled spirits received and disposed of by him, and shall render under oath correct transcripts and summaries of such records: *Provided*, That the Commissioner may in his discretion require such record to be kept at the place where the spirits are actually received and sent out. The records shall be kept and the transcripts shall be rendered in such form, and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

"The records required to be kept under the provisions of this section and regulations issued pursuant thereto, shall be preserved for a period of four years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by the Commissioner or any internal revenue officer.

"Every rectifier and wholesale liquor dealer who refuses or neglects to keep such records in the form prescribed by the Commissioner, with the approval of the Secretary, or to make entries therein, or cancels, alters, or obliterates any entry therein (except for the purpose of correcting errors) or destroys any part of such records, or any entry therein, or makes any false entry therein, or hinders or obstructs any internal revenue officer from inspecting such records or taking any abstracts therefrom, or neglects or refuses to preserve or produce such records as required by this chapter or by regulations issued pursuant thereto, shall pay a penalty of \$100 and, on conviction, shall be fined not less than \$100 nor more than \$5,000, and be imprisoned not less than three months nor more than three years.

"Every rectifier and wholesale liquor realer who refuses or neglects to render transcripts or summaries in the form required by the Commissioner, with the approval of the Secretary, shall, upon conviction, be fined not more than \$100 for each such neglect or refusal."

Statement of Points

The District Court erred:

1. In granting appellees' motion for a summary judgment.
2. In failing to deny appellees' action for a summary judgment.
3. In failing to grant a summary judgment for appellant enjoining appellees as prayed for in the complaint.
4. In holding that there was substantial evidence adduced in the proceedings before the Alcoholic Beverage Control Board which support the findings and conclusions of that Board in this case.
5. In failing to hold that the conduct of the appellees and the Alcoholic Beverage Control Board in this case constituted an unlawful discrimination against appellant.
6. In failing to hold that the action of the appellees and the Alcoholic Beverage Control Board was arbitrary, capricious, discriminatory, and unsupported by substantial evidence.
7. In entering a summary judgment for appellees and each of them.

Summary of Argument

1. The District Court should have set aside the Board's order denying appellant license renewal because the evidence on which the Board based its ruling is not substantial, when viewed in the light of the record as a

whole. Although the court presumed to apply the substantial evidence test, it failed to bring to the case that independent judicial analysis which the Supreme Court has only recently announced as the proper measure of judicial review. *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474. The exacting review of administrative action which that case requires is particularly appropriate in this case. This is so, first, because the issue involved here is the character of a District citizen, an issue plainly not requiring administrative expertise and one on which the court was certainly as well qualified as the Board. This is so, second, because this case concerns not an application for a first license, but one for renewal of a license held for some 13 years in connection with an established and valuable business. Under those circumstances, the administrative discretion is much narrower than on a first application. *In re Carter*, — App. D. C. —, 192 F. 2d 15.

2. The majority of the Board relied almost wholly on testimony adduced from three bootlegger witnesses that there was a conspiracy between them and appellant. This testimony is so flimsy, so vague and indefinite; so replete with contradictions; that, even by itself, it is completely unreliable. Couple this with (a) appellant's unequivocal denial of the testimony as to conspiracy; (b) the fact that it came from alleged co-conspirators and confessed bootleggers, and so should have been subjected to close scrutiny; and (c) the fact that one of the Board members vigorously dissented from the majority's decision; and it is plain that the bootleggers' testimony is of so little probative value that it cannot constitute the substantial evidence necessary to support the ruling of the Board majority.

3. The Board admitted evidence demonstrating that appellant had been indicted for violation of a record-keeping provision of the Internal Revenue Code and that

he had paid \$1,000 in compromise of that indictment. The Board heavily relied on this evidence in deciding to institute the proceeding and in ruling against appellant, treating his compromise payment as an admission of his guilt. The Board's admission of such evidence as to compromise, its imputation of guilt to appellant, and its reliance on such evidence in ruling against appellant are eloquent demonstration of the Board's flagrant prejudice and arbitrariness in this case and require reversal of the Board's order. Plainly, such evidence does not afford any support for the Board's ruling.

4. The evidence of record is overwhelming in proof of appellant's good moral character and fitness for trust. Twelve witnesses unanimously testified that his reputation as a man of good character was excellent. The evidence as to his life in the District confirms these judgments.

5. The Board's action unlawfully discriminated against appellant. This is so, first, because it singled appellant out for a show cause proceeding from a group of thirteen applicants for license renewal, all of whom, as the Board knew, had been indicted for alleged violation of the same record-keeping provision of the Internal Revenue Code and had compromised their indictments by money payments to the United States. This is so, second, because it denied appellant license renewal while granting such renewal to the others. This is plainly unlawful discrimination. This is not a case where an agency's rulings on one day are inconsistent with its prior rulings; such inconsistency, though undesirable, is permissible. Rather is this a case where on the very same day, in effect, an agency applies a double standard to simultaneous applicants for license renewal, denying renewal to one—appellant—while granting it to the others in exactly the same position—the twelve other applicants who were

indicted and who, like appellant, compromised their indictments. Cf. *National Air Freight Forwarding Corp. v. Civil Aeronautics Board*, — App. D.C. —, 197 F. 2d 384.

6. When appellant's counsel sought to cross-examine the bootlegger witnesses in an effort to demonstrate their bias against appellant, the Board cut off such cross-examination. Such curtailment of the right of cross-examination is a further ground for reversal of the Board's order.

Argument

The Board's action denying appellant license renewal is unquestionably subject to a judicial review which encompasses all questions incidental to consideration of the due process issue. *In re Carter*, — App. D.C. —, 192 F. 2d 15, 17; *Clore Restaurant, Inc. v. Payne*, 72 F. Supp. 677 (D.C.). The *Clore* case, where the District Court struck down an order of the very Board here involved which, like the order here in question, denied an application for a liquor license, announces this dual standard of validity for such orders: *first*, they must be based on substantial evidence; and *second*, they must not be arbitrary and capricious. 72 F. Supp. at 681. The order here is invalid on both these counts. It should therefore have been set aside by the District Court.

I

The Evidence on Which the Board Based Its Ruling is Not Substantial, When Viewed in the Light of the Record as a Whole. The Board's Order Should Therefore Have Been Set Aside.

Quite properly, the court below first tested the Board's ruling against the standard of substantial evidence (R. 28A-29A). *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, makes it plain, however,

that the standard is a much more rigorous one than the court applied, and the review required much more searching than the court accorded to this case.

Although *Universal Camera* concerns directly only Labor Board action, it is equally applicable on judicial review of other administrative action. See *id.*, 340 U.S. at 487; *Richardson v. Britton*, — App. D.C. —, 192 F.2d 423, 424. And *Universal Camera* makes it clear that the past reluctance of some courts to explore the entire administrative record where a modicum of evidence appears to support an agency's decision can no longer be justified. Whether or not they did so before, courts must now give consideration not only to the body of evidence on which the agency relied and which may conceivably support its rulings, but to the *entire* record. 340 U.S. at 487-488.

They must furthermore independently consider the credibility and the probative value of the testimony adduced at the administrative hearing. In order to assure that an agency does not "rely upon 'suspicion, surmise, implications, or plainly incredible evidence' . . . courts are to exact higher standards 'in the exercise of their independent judgment' and on consideration of 'the whole record.'" 340 U.S. at 484. Reviewing courts are no longer barred, as some previously believed they were, from setting aside an administrative decision "when . . . [they] cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, *including the body of evidence opposed to the Board's view.*" 340 U.S. at 488 (emphasis supplied). In short (340 U.S. at 490; emphasis supplied):

" . . . The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court . . . clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or

its informed judgment on matters within its special competence or both."

Such independent judicial analysis, required by the substantial evidence test laid down in *Universal Camera*, was lamentably absent in the District Court's review of this case. Yet it would have been particularly appropriate here. Here, as in the *Carter* case, the sole issue before the administrative agency was *character*. And, as this Court remarked, in *Carter*, character qualifications of an applicant for license do not "turn on technical questions requiring expert opinion." 192 F. 2d at 17. The Board has no special competence to determine such an issue. The courts of the District of Columbia are certainly as well qualified, if not more so, to decide whether a District citizen is a person of good moral character. In a case such as this, notions of administrative expertise have no proper place and, when they intrude themselves, as they did below, they serve but to emasculate the process of judicial review. See *The Osage Nations v. United States*, 119 Ct. Cl. 592, 97 F. Supp. 381, 387-391; *N.L.R.B. v. Guy F. Atkinson Co.*, 195 F. 2d 141 (C.C.A. 9), cert. den. 342 U.S. 896.

Although the court below remarked on the conflicts in evidence and the unreliability and bias of some of the testimony offered against appellant, it concluded that since there was "evidence upon which the Board could reasonably reach a conclusion that there was . . . a conspiracy," the court could not "weigh the evidence and determine what its conclusion would have been" (R. 29A). But, in the circumstances of this case, where the issue was character, that is just what the court could and should have done. The court's judgment on that point would have been at least as qualified as the Board's, and substitution of its judgment for the Board's as to that issue was clearly indicated. See Davis on *Administrative Law* (1951), p. 896.

There is another reason why the review of the Board's conduct should have been more exacting than that accorded by the District Court. We are concerned here not with an application for a first license, but with one for renewal of a license held for some thirteen years, in connection with an established and valuable business of long standing (R. 93A-94A). This Court has pointed out how compelling the reasons must be to refuse such a license renewal. *In re Carter*, — App. D.C. —, 192 F. 2d 15; see, also *Journal Co. v. Fed. Radio Commission*, 60 App. D. C. 92, 94, 48 F. 2d 461. The discretion of an agency when it acts on an application for renewal of a license is consequently considerably more restricted than when it acts on an application made the first time. *Pennsylvania Distilling Co. v. Pennsylvania Alcohol Permit Board*, 20 Pa. D. & C. 385; *License of Schantz*, 1 Pa. Col. 361; *Charles D. Kaier Co. v. Doran*, 42 F. 2d 923 (D. Pa.); see *Khoury v. Board of Liquor Control*, 81 N.E. 2d 634 (Oh. App.). In *Doran, supra*, the court said (42 F. 2d at 924):

“ . . . The plaintiff has held that kind of permit which expires with the calendar year, but the mode of renewal is the subject of regulation. The administrator passes upon the application in the exercise of his executive judgment. . . . The judgment of refusal must . . . be shown to have support in the facts. The fact, as here, that a brewery has held a permit for many successive years is not only a fact but one of much significance. . . . ”

Because of these extraordinary considerations—that is, the ethical nature of the issue involved and the fact that this was a case of license renewal rather than one of first application—the court below should have examined the Board's ruling with a more exacting eye than generally prevails in application of the substantial evidence standard. But even without that exacting review for which we contend, we think that it is plain that the evi-

dence supporting the Board's denial of license renewal is far from substantial.

A. The majority of the Board relied almost wholly on the testimony as to conspiracy adduced from three bootleggers. Such evidence, however, has no probative value and does not support the Board's ruling.

The majority of the Board relied almost wholly on the testimony of three witnesses, Lisk, Pridemore, and Short, all admitted bootleggers illicitly running liquor into North Carolina. In "the light that the record in its entirety furnishes," (340 U.S. at 488), that evidence not only falls far short of being substantial, but is so flimsy, so inconsistent, so unworthy of belief and respect that the Board's ruling is shocking.

In substance, the testimony of the bootleggers is as follows:

Lisk testified that he first met appellant in November, 1947, when he came into appellant's store, accompanied by companion bootleggers Pridemore and Hill. At that time, he says, he bought 34 or 35 cases of liquor, for which he paid \$1320. The bottles were removed from the cases and put into shopping bags. Appellant was there; asked Lisk his name; gave Lisk appellant's telephone number; and told Lisk to telephone him if Lisk got caught; otherwise appellant would not make any entry of the sale in his books (R. 39A-42A).

Pridemore also testified of that visit. But his story of the visit was different. Only 20 or 25 cases were purchased, says Pridemore, and only \$750 (\$25 or \$30 a case) were paid. Pridemore does not remember that appellant asked for Lisk's or Pridemore's name or gave Lisk his telephone number. There was some conversation between appellant and Lisk, however, to the effect that if "we was picked up by the law or the officers, we were to call him so he could enter it. I don't know

what that meant, 'so he could enter it.'" (R. 53A, 55A).

These conflicts in the testimony of the two major witnesses called by Board counsel were never reconciled. Nor were the many others which marked their testimony. Thus, Lisk testified that he did not return to appellant's store until July, 1949 (R. 42A-43A). Pridemore's version, however, again varies from his supposed companion's: he says that Lisk and he returned on at least three more occasions in November and December, 1947 (R. 55A, 57A-58A, 60A). On the first of these, in November, 1947, Pridemore testified, Lisk bought about 30 cases (R. 56A). Although Pridemore is at first not sure that appellant said anything at the time, prodding of the Board's counsel elicits that "we were always told if we got picked up to call" (R. 57A). But appellant did *not* ask for Lisk's or Pridemore's name (*ibid.*).

The second of these three occasions (to which Pridemore testified, although Lisk says that it was not until much later in 1949, that he returned) occurred several days after the first (R. 57A-58A). Pridemore cannot say how much was paid for the liquor purchased then; for, as Pridemore belatedly confesses, "I *never* did know what was paid"! (R. 58A). Here, Pridemore appears certain again that appellant did not ask Lisk his name (*ibid.*), and he does not recall that anything was said as to a telephone call (R. 59A).

The third of these three occasions, of which Lisk himself was apparently unaware, again occurred a few days after (R. 60A). Pridemore could not testify that anything was said at the time, and there was no discussion about their prior trip, even though they had been stopped by police officers and their liquor confiscated during that trip (R. 60A-61A).

Pridemore testified that he and Lisk were caught only once by police authorities—at Dillwyn, Virginia, in 1947 (R. 59A); Lisk apparently confirms this incident (R. 46A). But, although Lisk says that he telephoned appellant at this time (*ibid.*); Pridemore cannot remember that such a call was made (R. 59A-60A). Lisk testified also to a second occasion when Pridemore and he were apprehended (R. 46A); Pridemore, however, is completely silent about any such incident.

Lisk, as already noted, testified that after his visit in November, 1947, he did not return to appellant's store until July, 1949 (R. 42A-43A). At that time, on two separate occasions when he came into the store, Lisk says that appellant's brother was there, but not appellant (R. 43A, 45A). His alleged companion on the later of these visits, one Short, testified, however, that both appellant and appellant's brother were in the store at the time (R. 69A). But not much was said; and according to Short, no one asked for Lisk's name and nothing was said about a telephone number (R. 69A-70A).

Pridemore also testified that either late in 1947 or early in 1948, he visited appellant's store in the company of one Huff and that Huff bought about 25 cases at the time (R. 61A, 62A). Although Huff then had a conversation with appellant or his brother, nothing was said about making a telephone call in the event they were caught (R. 62A-63A). Indeed, on this occasion, Pridemore and Short were stopped by Virginia officials, and the car and liquor were confiscated, but Pridemore did *not* call appellant (R. 63A-64A).³

³ Short also testified to several purchases he made independently at appellant's store during October, November, and December of 1949 (R. 70A-80A). Apparently, however, the majority of the Board either did not believe Short's testimony or deemed it irrelevant. For, the Board makes no findings with respect to these alleged purchases; its findings (R. 15A-17A) deal with sales only during the period November, 1947 through July, 1949.

This is the sum of the testimony of the North Carolina bootleggers on which the majority of the Board relied. Other than that, the Board's counsel offered only testimony of a former federal Alcohol Tax Unit Investigator (R. 80A-83A) and of two inspectors on the Board's staff (R. 83A-85A, R. 164A-168A) concerning the records which appellant made pursuant to the requirements of the Internal Revenue Code. This testimony is essentially documentary and not in dispute. Appellant's records (Forms 52(a) and 52(b)) disclose that from July 1, 1947 to February, 1950, entries were made of the following four sales:⁴

- (1) November 19, 1947—32 cases to Leard Evander Lisk, Jr. (R. 94A);
- (2) February 9, 1948—30 cases to Louis W. Huff (R. 82A, 97A);
- (3) February 13, 1948—35 cases to Leonard Sykes (R. 98A);
- (4) July 23, 1949—22 cases to Leard Evander Lisk, Jr. (R. 82A, 84A, 151A).

No record entry of any other sale in such wholesale quantity was made, particularly none of any sale either to Pridemore or to Short (R. 82A, 84A-85A, 105A).⁵

⁴ The federal and Board's inspectors testified to the February, 1948 and July, 1949 entries (R. 82A, 84A). Appellant confirmed these and read the November, 1947 and February, 1948 entries from his copy of the official record, which copy was offered in evidence (R. 94A, 97A, 98A). There does not seem to be any serious question but that all these entries were made. Counsel for the Board did imply that the July, 1949 entry was made out of order and only in response to belated news of Lisk's arrest at that time (R. 150A-158A, *passim.*); but counsel's strenuous efforts to demonstrate that that was indeed a fact foundered in the face not only of appellant's simple explanation (*ibid.*) but of the testimony as well of the Board's own inspector (R. 165A-168A).

⁵ The absence of any record entries of sales to Short is of no significance. For, as heretofore noted (*supra*, note 3), the majority of the Board was apparently not impressed by Short's testimony and made no findings as to the purchases he said he had made during the period October 1949 to December 1949.

When appellant was called to testify, he unequivocally denied the major portion of the bootleggers' testimony. He did remember Lisk and the sales he had made to him in November, 1947 and July, 1949, as noted in his Form 52(b) record book (R. 94A, 95A, 98A). He testified, however, that he did not sell Lisk any liquor in wholesale quantities other than on those two occasions (R. 98A, 108A). He had seen Pridemore and Short come into the store with Lisk (R. 99A), but he did not at any time sell any liquor in wholesale quantities to either of them (R. 99A, 104A, 108A, 158A). He had never telephoned Lisk or anyone in North Carolina with respect to him, and Lisk had never telephoned appellant (R. 98A). Nor, said appellant had he any arrangement or agreement with Lisk or anyone else, such as that suggested by the bootleggers, that appellant would not make record entries unless telephoned by them in the event they were caught (*ibid.*). In short, appellant completely and unequivocally denies the conspiracy implied by the testimony of the North Carolina witnesses and found as a fact by the Board majority.

It is shocking to see a man's business and reputation sacrificed on the flimsy evidence we have outlined, whatever the source of such evidence. But, even more, it is startling to find such homage paid to the testimony of these three bootlegger witnesses. Even apart from other considerations, it is fundamental that the testimony of alleged accomplices will be "subjected to close scrutiny and minute examination and weighed with great care and caution." *United States v. Glasser*, 116 F. 2d 690, 703 (C.C.A. 7). No one, however, can suggest that the testimony of Messrs. Lisk, Pridemore, and Short was so evaluated.

"Common experience," said Mr. Justice Stone, "teaches us that the testimony of such witnesses, especially when

uncorroborated, is open to the suspicion of bias . . .” *District of Columbia v. Clawans*, 300 U.S. 617, 630-631. Again, the Supreme Court has said that it is “the better practice for courts to caution juries against too much reliance upon the testimony of accomplices and to require corroborating testimony before giving credence to such evidence.” *Caminetti v. United States*, 242 U. S. 470, 495. But the majority of the Board was neither moved by such experience nor aware of such practice. Although appellant denied the testimony of the bootleggers, the majority not only required no corroboration of their stories, but the Chairman of the Board even barred appellant’s counsel from showing the witnesses’ bias. Thus, Lisk, who was the principal alleged co-conspirator, admitted, on cross-examination, that he was testifying at the hearing only because of his anger at appellant, because he had been led (falsely) to believe that appellant had charged him with receipt of some 200-odd cases of liquor which he had never received (R. 48A-51A). “. . . I am up here,” Lisk testified, “because I got liquor charged to me that I didn’t get. If it was not for that, I would not be here.” (R. 48A). Yet, when appellant’s counsel, continuing the cross-examination, tried to develop Lisk’s obvious bias against appellant, the Board’s counsel objected, righteously urging that “This witness is not on trial and we are not going to subject him to any undue embarrassment.” Whereupon, appellee Payne, the Board’s Chairman, sustained the objection (R. 51A)!

The dissenting member of the Board did earnestly urge his fellows that “By the very nature of the bootleggers’ transactions with the licensee, their testimony should be considered by the Board with due care and caution.” (R. 19A). But the majority was not moved. Riddled as that testimony was with vague allusion and half-remembered recollection; marked as it was with uncertainty, inconsistency, and mutual contradiction; the majority of the

Board accepted it uncritically, readily, perhaps even eagerly, without further probing or question.”⁶

We submit that the bootleggers' tales are so unreliable, of such doubtful probative value, so unworthy of belief, that they cannot support a ruling such as this one, which condemns a law-abiding citizen of excellent reputation in the community as of such poor character that he is unworthy further to hold a liquor license he has held without question for more than a decade. See *Pittsburgh S. S. Co. v. National Labor Relations Board*, 180 F. 2d 731, (C.A. 6), aff'd. 340 U.S. 498.

B. The Evidence As To Appellant's Compromise of His Indictment, on Which the Majority of the Board Relied, Is Irrelevant and Should Have Been Excluded. It Affords no support for the Board's Ruling. Admission of such Evidence and Reliance on it Are Further Independent Grounds for Reversal of the Board's Ruling.

In August, 1950, appellant was indicted for his alleged failure to keep records of wholesale liquor sales, as required by section 2857(a) of the Internal Revenue Code (26 U.S.C. 2857(a), *supra*, pp. 9-10). In October, 1950, appellant, through his attorney, offered \$1,000 in compromise of the alleged violation; the compromise offer was accepted; and, on motion of the United States Attorney, the Court dismissed the indictment against appellant (R. 159A-161A).

Well-established doctrine would have required the exclusion of this evidence as to compromise. *West v. Smith*,

⁶ This dissent is, of course, a significant matter to be considered in determining whether the evidence relied on by the majority is substantial. Such evidence "may become even less substantial when it fails to persuade an experienced member of the . . . [Board] who dissents from its findings and conclusions." *Minneapolis Honeywell Regulator Co. v. Federal Trade Commission*, 191 F. 2d 786, 789 (C.A. 7); *United States v. Interstate Commerce Commission*, — App. D. C. —, July 18, 1952.

101 U. S. 263, 273; *Home Insurance Co. v. Baltimore Warehouse Co.*, 93 U.S. 527, 548; see Rule 209, American Law Institute, *Model Code of Evidence* (1942). And for most cogent considerations. 4 Wigmore on *Evidence* (2d. ed., 1940), p. 28. But the Board's counsel insisted on its admission. And the majority of the Board made findings with respect to it (R. 16A) and ascribed much importance to it. The record is replete with the persistent efforts of Board counsel to persuade appellant that his compromise offer was a confession of guilt (R. 99A-103A *passim*, 108A-109A). Twice, appellant testified that he had paid the \$1,000 in compromise, "on advice of counsel" (R. 100A, 109A). Still, the Board's counsel insisted, and the majority of the Board agreed, that it might infer guilt from the offer of compromise.

Consider for a moment the chronology of this case. The Board was informed, as far back as 1949, that there appeared to be certain irregularities in appellant's records (R. 84A). Notwithstanding, it not only took no action against appellant, but, to the contrary, granted his application for renewal of his license in February, 1950. In granting that renewal, the Board must necessarily have found affirmatively that appellant was "of good moral character and generally fit for the trust to be in him reposed" (D.C. Code (1951 ed.), tit. 25, sec. 115(a)). Obviously, then, the Board did not consider such record irregularities sufficient to cast doubt on appellant's eligibility for license.

Only when the federal indictment was returned and the compromise payment was made—almost a year later—did the Board look with suspicion on appellant. It was the indictment and compromise, then, which inspired its inquiry and adverse decision. But the indictment was dismissed; and, as indicated, the compromise payment could not properly have been viewed as a confession of guilt.

That the indictment was returned and that appellant offered and made a payment in compromise of the Revenue Code violation charge were, of course, of no significance so far as appellant's character and fitness were concerned. Certainly, one could not draw any unfavorable inference from these circumstances. To the contrary, the rationale of the Justice Department officials for accepting the compromise is eloquent testimony that appellant's violation of the Internal Revenue Code, if indeed there was one, was merely a *technical* violation and no more. United States Attorney Fay, in recommending to the Attorney General that the offer in compromise be accepted, wrote (R. 160A):

"I recommend that the offer in compromise be accepted, as I feel this is the type of case in which an offer to compromise the criminal liability is proper, in view of the fact that the Federal Government has not been defrauded, as all taxes and license fees, both Federal and local, have been paid by the defendants, and the failure to keep proper records was not with the intent to defraud the Government of taxes or fees."

That recommendation was accepted. The offer in compromise was accepted. The indictment was dismissed. And that should, in all fairness, have been the end of the matter. Certainly that history supplied no valid reason for the Board's findings and decision here. As this Court recently said, "Old charges never brought to trial, and . . . (appellant's) innocent mistake of fact on an immaterial matter do not support" the refusal to renew a license on grounds of character. *In re John W. Carter*, — App. D.C. —, 192 F. 2d 15, .

Admission of this evidence as to appellant's compromise of the indictment is a further demonstration of the Board's flagrant prejudice and arbitrariness in this case and requires reversal of its order denying appellant license renewal.

C. The Evidence Is Overwhelming in Proof of Appellant's Good Moral Character and Fitness for Trust.

We have reviewed all the evidence on which the majority of the Board relied in support of its decision. We have demonstrated that even regarded alone, apart from the rest of the record, that body of evidence is of so little probative value that it can in no sense be considered substantial. That that is so becomes even clearer when the question is "viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view." 340 U.S. at 488.

Approximately one-fourth of the written transcript of testimony before the Board is filled with the encomiums of the most reputable of witnesses, all of whom unanimously affirm appellant's excellent reputation in the community as a man of good character. Here is the roster of those witnesses:

Joseph D. Bulman, an attorney in the District since 1931 (R. 109A-110A); Michael Kapneck, a real estate broker and chairman of one of the selective service boards in the District (R. 110-112A); Basil F. McAllister, a retired police captain, with a 29 year record on the force (R. 112A-117A); James A. McNamara, athletic director of the Jewish Community Center, a resident of the District for 32 years (R. 117A-123A); Meyer Siegel, a real estate broker and former licensee from the Board, a resident of the District since 1921 (R. 123A-126A); Joseph Carroll, a builder for some 14 years (R. 126A-129A); Walter Podrog, a real estate broker and member of the Washington Real Estate Board (R. 129A-132A); Thomas J. Norris, vice president of the Bank of Commerce and Savings (R. 132A-136A); David Hornstein, an attorney in the District for some 25 years (R. 136A-139A); Hogarth William Colston, a licensee of the Board, in the wholesale liquor business for 16 years (R. 140A-143A); Morris Forman, another wholesale liquor dealer, with 10

to 11 years of experience (R. 144A-147A); and Milton S. Kronheim, a third wholesale liquor dealer, active in the District since the repeal of prohibition (R. 161A-163A).

All these witnesses testified that appellant's reputation and character were excellent. Their praise was of the highest. And appellant's testimony as to his history in the community supported their high estimates. (R. 93A-95A).

In the face of this evidence, the conclusion of the Board—that it is “unable to satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed” (R. 17A)—is incredible.

II

The Board's Action Unlawfully Discriminated Against Appellant, Both (1) Insofar as It Singled Him Out for Investigation and Adverse Action From the Group of Licensees Likewise Indicted for Violation of the Same Internal Revenue Code Provision, and (2) Insofar as It Denied Him License Renewal While Granting Such Renewal to the Others. Appellees' Motion for Summary Judgment Therefore Should Have Been Denied, and Summary Judgment Instead Granted for Appellant.

The Board justified its inquiry into appellant's character solely on the ground that it had received information that he had violated the record-keeping provisions of section 2857(a) of the Internal Revenue Code, had in consequence been indicted for such violation, and had paid \$1,000 in compromise of that charge. (R. 14A-15A). The decision of the Board's majority also was grounded, in considerable measure at least, on those considerations. (R. 16A-17A).

Yet, as already indicated, the record discloses this startling fact: twelve other retailer licensees had likewise

been indicted for similar violations and had likewise made payments in compromise of such indictments, and in not one of those cases did the Board deem it necessary to initiate an inquiry or to rule against renewal as it did here!

The record is plain (R. 5A-6A, 32A-34A, 87A-88A, 163A-164A).⁷ Twelve other licensees were charged, just as appellant was here, with failure or refusal to make record entries in accordance with section 2857(a) of the Internal Revenue Code. They were indicted for such alleged violations, several more than once. They offered sums ranging from \$1,000 to \$10,000 in compromise of such charges. These compromise offers were accepted, and the indictments were *nolle prossed*. And, as appears from the Board's own files, the Board was fully aware that such indictments had been returned (R. 87A).

It cannot be disputed, therefore, that, for some unknown reason, appellant was singled out by the Board and dealt with more harshly than were his fellow-licensees. For some undisclosed cause, a different and more exacting set of standards was applied to appellant; his license was terminated while the licenses of others in exactly the same position were simultaneously renewed.

The Board's counsel has suggested that it is merely chance that this isolated case was selected for prosecution or enforcement while similar breaches of the law were condoned or ignored. Even were that so, if the enforcement authorities knew of the other infractions, discrimination by enforcement against only one law-breaker would probably be unlawful. See D. C. Code

⁷ Appellant's counsel offered proof of these indictments and compromise payments, but the Board refused to admit such proof (R. 163A-164A). Since the indictments, the compromise, and the disposition of the charges are all the subject of official court records, the Court may, of course take judicial notice of them.

(1951 ed.), tit. 4, sec. 139.⁸ But, the truth of the matter is that the Board was not here acting as a law enforcing agency. It was acting as a regulatory agency, concerned with the matter of renewing appellant's and others' licenses. And, since all retailers' licenses which it issues are annual licenses (D.C. Code (1951 ed.), tit. 25, sec. 114), it had for consideration, *at the very same time it was acting on appellant's application*, the renewal of all retail dealer licenses, including, particularly, those of the other dealers who likewise had been charged with and had compromised violations of section 2857(a) of the Internal Revenue Code.

It seems fundamental that, in such circumstances, the Board could not dispose of those other applications under standards different from those it employed in appellant's case. But that is just what it did do here. Without explanation, it singled appellant out for special inquiry. And a majority of the Board refused to renew his license while blithely and without question renewing the licenses of the other indicted violators, all of whom had also compromised their cases with the federal Government.

This is obviously the kind of discriminatory treatment which is barred by the Constitution. It is of no significance that the Board may have the *power* to deny applications for renewal. The question is how did it exercise that power. If it acted in such fashion as to breach appellant's constitutional immunity against discrimination, the Board's conduct is unlawful and cannot withstand judicial scrutiny. *Bohler v. Calloway*, 267 U.S. 479; *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540; *Dobbins v. Los Angeles*, 195 U.S. 223; *Yick Wo v. Hopkins*, 118 U.S.

⁸ This section provides as follows:

"The said Board of Commissioners (of the District of Columbia) shall not enforce any law or ordinance discriminating between persons in the administration of justice."

356; *Glicker v. Michigan Liquor Control Commission*, 160 F. 2d 96 (C.C.A. 6); *U.S. ex rel. Knauff v. McGrath*, 181 F. 2d 839 (C.A. 2); *National Labor Relations Board v. Mall Tool Co.*, 119 F. 2d 700, 702 (C.C.A. 7).

In *Yick Wo. v. Hopkins*, 118 U.S. 356, local ordinances regulating laundries were stricken down, not because they were *per se* outside the limits of the police power, but because the administrative officers applied them discriminatorily (118 U.S. at 373):

“... Whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration . . . with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the petitioners . . . Though the law itself be fair on its face and impartial in appearance, yet, if it is so applied and administered by public authorities with an evil eye and an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution . . .”

And, in *Glicker v. Michigan Liquor Control Commission*, 160 F. 2d 96, this salutary doctrine was applied to a licensing situation similar to the instant case. There, the plaintiff's license to sell liquor had been suspended allegedly because of plaintiff's political beliefs. The District Court's dismissal of the complaint was reversed by the Circuit Court of Appeals, which said, in part, (160 F. 2d at 100-101):

“The fact that appellant is in the liquor business does not release the state from the restrictions on its regulatory powers . . . It may authorize the state to impose more stringent regulations against those engaged in that business than are imposed against those engaged in other callings, ‘*but it affords no justification for discriminating between persons simi-*

larly situated who may be, or may desire to become, engaged in that calling.' (citing cases)" (Emphasis supplied).

See, also, *United States ex rel. Knauff v. McGrath*, 181 F. 2d 839 (C.A. 2), where Chief Judge Learned Hand epitomizes the Court's holding, as follows (181 F. 2d, at 843):

"... The case comes to us on a record which . . . compels us to assume that the Attorney General has hitherto in all cases postponed deportation while a bill to admit the alien has been pending in Congress. . . . since it is alleged to have been a general practice, we should accept the allegation as it reads, unless the return (to the writ of habeas corpus) denies that it has ever covered cases like the relator's. The absence of any such denial and of any excuse seems to me to present an unrelieved instance of administrative caprice, which we may not ignore."

In the present case, too, the Board was guilty of "discriminating between persons similarly situated"; here, too, there was an unexplained and inexcusable departure from "a general practice" in accordance with which cases like appellant's have been handled, a practice under which such cases have been deemed to present no occasion for disciplinary action. Here, too, as in the cited cases, therefore, the action of the majority of the Board presents "an unrelieved instance of administrative caprice" which it is the duty of the courts to condemn and to set aside.

We do not mean to suggest that administrative agencies are required to be consistent in their decisions from day to day. That is by no means the case. Although consistency is desirable (see *National Labor Relations Board v. Mall Tool Co.*, 119 F. 2d 700, 702 (C.C.A. 7)), administrative bodies may change their practices and standards in the light of added experience; because they have failed yesterday to take action against persons who have breached their regulations does not prevent them

from taking action tomorrow against others. See, e.g. *Lanolin Plus Cosmetics v. Marzall*, — App. D.C. —, 196 F. 2d 591.

But that is not this case. Here, the Board had before it *at the very same time*, the applications of thirteen retailer licensees for renewal of their licenses. It knew that all thirteen had been indicted for violation of the one same provision of the Internal Revenue Code and that all had compromised those indictments. It selected only one of these for investigation, hearing, and ultimate adverse action; to all the others it granted renewals. Thus, at the one time, it was applying a more rigorous standard to appellant's application than it was to the others. It was not changing its yesterday's standards for future cases. It was, in effect on the same day, using a double set of standards—one for appellant and the other for all other applicants for renewal. This is clearly unlawful discrimination.

This Court's recent decision in *National Air Freight Forwarding Corp. v. Civil Aeronautics Board*, — App. D.C. —, 197 F. 2d 384, is in point. There the applicant for permission to operate as an air freight forwarder sought reversal of a CAB order denying it such permission, on the ground, among others, that the Board had granted similar applications of others while denying petitioner's. Although the Court held the CAB's order not discriminatory, it did so only because in granting each of the other applications, "CAB stated one or more factors which distinguished the applicant from" petitioner (*id.*, 390). It is implicit throughout the Court's opinion that only because CAB did so distinguish the other cases could the order under review withstand the charge of discrimination.⁹ See, also, *Berchem v. R.F.C.*,

⁹ It is noteworthy that Judge Prettyman, dissenting, would have set aside the CAB order and required CAB to make further findings and conclusions to demonstrate whether its denial of Air Freight's application was arbitrary, as alleged. (*id.*, 397). For he

191 F. 2d 922 (Em. Ct. App.); cf. *N.L.R.B. v. Guy F. Atkinson Co.*, 195 F. 2d 141 (C.C.A. 9), cert. den. 342 U. S. 896.

In our case, however, the Board not only failed to distinguish the other instances in which licenses were renewed without question; it ignored such discriminatory treatment as quite irrelevant.

More than a dozen licensees who applied to the Board for renewal of their retail dealer licenses had a common history of prior indictment for alleged violation of section 2857(a) of the Internal Revenue Code; all, presumably on advice of counsel, offered amounts ranging from \$1,000 to \$10,000 in compromise of those charges; all these compromise offers were accepted by the Bureau of Internal Revenue, the Attorney General, and the United States Attorney; all the indictments were *nolle prossed* or dismissed. Appellant was but one of these applicant licensees. Yet only he was singled out for special investigation and disciplinary action. Only his application for renewal was rejected. His is the only license which was not renewed by the Board.

Clearly, the Board's action should not have been permitted to stand, and summary judgment should have been

could find no real distinction between the petitioner's application and those previously granted (*id.*, 391):

"... I cannot tell from the Board's report whether it has been arbitrary or not. Counsel now find bases for the grant of some registrations and the denial of this one, opposite results, but those bases ought to be found in the Board's report. The question is whether the Board was arbitrary, not whether its counsel are able to justify the result. That is the rationale of the opinions in *Colorado-Wyoming Gas Co. v. Federal Power Commission* (324 U. S. 626) and similar cases, as I read them."

And, again (*id.*, 393):

"... There is not sufficient in the report, to my way of thinking, to indicate that these differences in treatment were not arbitrary. Certainly on the face of the record they would appear to be so. . . ."

granted to appellant, rather than to appellees. But, even were the record at this stage inadequate to support such a grant of judgment to appellant, a genuine issue of material fact was presented, and the grant of summary judgment for appellees was therefore in error. *Vale v. Bonnett*, — App. D.C. —, 191 F. 2d 334; *Dewey v. Clark*, 86 App. D.C. 137, 180 F. 2d 766.

This is plain from the memorandum of the Court itself. Adverting to the claim of discrimination, the court said (R. 29A): "Without passing upon the merits of such contention, it suffices that *no showing has been made* that any conspiracy such as the Board found in the instant case, was present with respect to the instances mentioned" (emphasis supplied). We believe, as we have said, that the similarity of the circumstances has been adequately demonstrated. But, even if it has not, appellant certainly has no obligation to make such a showing at this stage of the proceeding. This was appellees' motion for summary judgment, not appellant's; and to take such a judgment, appellees were required to show that not even a single "genuine issue as to any material fact" remains unresolved (Rule 56(c), Fed. Rules Civ. Proc.). But the court itself recognizes the existence of a genuine issue of fact unresolved here—the issue whether the other twelve cases cited were in fact similar to appellant's in that they too involved the "conspiracy" charged to appellant.

To put it more succinctly: Appellant stated a claim for relief on the ground, *inter alia*, of unlawful discrimination by appellees. Whatever their rights to summary judgment on the issue of substantial evidence (as to which, see *supra*, I), appellees were still confronted with the claim of discrimination. Appellant was entitled to an opportunity to present evidence in proof of his claim—generally on trial of the case, certainly not at this preliminary stage of the proceeding. Appellant should not have been deprived of his "day in court" by a summary judgment prematurely granted.

It must be kept in mind further that the discrimination complained of lay not only in the Board's refusal to renew appellant's license but also in the Board's selection of appellant alone for hearing and adverse action, while completely ignoring the similar records of the other twelve licensees. Even if we were to assume *arguendo* that appellant had engaged in a conspiracy with the North Carolina bootleggers, the fact is that the Board did not know that until after it had held the administrative hearing. It was not the conspiracy which inspired the administrative proceeding; the notice of hearing made no reference whatever to any conspiracy or dealings with bootleggers (R. 14A-15A). When appellant's application for renewal came before the Board, it was aware only of his indictment for violation of section 2857(a) of the Internal Revenue Code and his compromise of that indictment. But, at the very same time, the Board had before it the applications of the other licensees who, as the Board knew, had also been indicted for violation of the same section. Why did the Board subject only appellant to a hearing and ultimately reject his application? Why did it treat appellant differently from the others? These are the issues material to the claim of discrimination. Conspiracy or no conspiracy, the convocation of the hearing as to appellant alone itself constituted an act of unlawful discrimination, against which appellant is entitled to relief.

III

The Board so Restricted Appellant's Right to Cross-Examine the Bootlegger Witnesses That it Seriously Prejudiced His Standing Before the Board. For That Reason, as Well, the Board's Order Should Have Been Set Aside.

We have already called attention to the Board's restriction on appellant's right of cross-examination. See *supra*, p. 22. Lisk, the bootlegger witness who was al-

legedly the principal co-conspirator, testified that he was at the hearing only because of anger against appellant, inspired by his belief that appellant had charged him with receipt of some liquor he had never received (R. 48A-51A). When appellant's counsel, by cross-examination, tried to develop Lisk's obvious bias against appellant, the Board arbitrarily refused to permit him to do so, giving heed to its counsel's righteous objection that "This witness is not on trial and we are not going to subject him to any undue embarrassment" (R. 51A).

Such curtailment of cross-examination is an abuse of discretion which renders the administrative order stemming from the hearing unlawful and requires that that order be set aside. *Beaumont Broadcasting Corp. v. FCC.*, — App. D.C. —, June 26, 1952; *Villaroman v. United States*, 87 App. D.C. 240, 184 F. 2d 261; *Ewing v. United States*, 77 App. D.C. 14, 135 F. 2d 633, cert. den. 318 U.S. 776; *Weeks v. United States*, 163 F. 2d 598 (C.C.A. 9).

CONCLUSION

For the foregoing reasons, the summary judgment entered for appellees should be reversed, and the District Court should be directed instead to enter a summary judgment for appellant.

Respectfully submitted,

JOSEPH A. KAUFMANN

HARRY I. RAND,

Attorneys for Appellant.

BRIEF FOR APPELLEES

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

*United States Court of Appeals
Circuit*

*For the
District of Columbia Circuit*

No. 11,444

FILED MAR 16 1953

HYMAN MINKOFF, *Appellant*,

Joseph W. Starnes

v.

CLERK

ALAN W. PAYNE, AGNES K. MASON, JAMES O'D. MORAN,
personally and as members of the Alcoholic Beverage
Control Board, *Appellees*.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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QUESTION PRESENTED

The Alcoholic Beverage Control Act for the District of Columbia requires the Board, before issuing a license to an individual to engage in the liquor business, to satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed by issuance of license. The Board, considering appellant's application for license, initiated a new, strict policy by advising him it had received information that he, on being indicted on charges^{of} making false entries in his records of liquor sales in violation of the Internal Revenue Code—felonies—had effected dismissal of such charges by paying \$1,000 in compromise and calling upon him to show to its satisfaction, in the light of the foregoing, that he possesses the statutory qualifications for license and gave him a hearing to enable him to do so, and at such hearing, appellant stating that in making said compromise he acted on advice of counsel, the letter of his then counsel tendering such compromise merely attempting to minimize the gravity of the criminal charges without denying commission thereof, and three North Carolina bootleggers testifying that at the time appellant sold liquor in wholesale quantities to them he had agreed with them that he would not enter such sales in his records unless they advised him they had been arrested, which agreements appellant denied making, and the Board, concluding that it was not satisfied that appellant meets the statutory requirements for license, denied his application therefor, the questions presented are whether, on the whole record,

(1) The Board's conclusion is supported by substantial evidence; and

(2) The Board discriminated against appellant by requiring him, under its new policy, to show to its satisfaction that he meets the character and fitness qualifications imposed by the Act.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,444

HYMAN MINKOFF, *Appellant*,

v.

ALAN W. PAYNE, AGNES K. MASON, JAMES O'D. MORAN,
personally and as members of the Alcoholic Beverage
Control Board, *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER STATEMENT OF THE CASE

Since 1937 appellant has engaged in the District of Columbia in the liquor business under annual licenses issued by the Alcoholic Beverage Control Board (App. 3) which expired on the 31st day of January of each year (Sec. 25-114, D. C. Code, 1951, post, p. 6). On December 13, 1950, appellant applied to appellees, members of the Alcoholic Beverage Control Board, hereinafter

referred to as the Board, for a Retailer's Class "A" license to engage in the liquor business in the District of Columbia during the license year commencing February 1, 1951 (App. 15).

By letter dated January 10, 1951, sent to appellant by registered mail, the Board advised appellant that it had received information to the effect that during the period from November 1947 through July 1949 appellant had made certain false and fraudulent entries in his business books and records, in violation of Title 26, Section 2857(a) of the Internal Revenue Code; that as a direct result appellant had been indicted on criminal charges; that appellant had secured dismissal of said criminal charges by paying \$1,000 in compromise thereof; that because of the foregoing it was unable to satisfy itself, as required by Section 14 (a-1) of the Alcoholic Beverage Control Act, that appellant is a person of good moral character and generally fit for the trust to be in him reposed by issuance of license, and directed appellant to appear before it on the 23rd day of January 1951 at 10:00 o'clock, A.M., to show to the satisfaction of the Board that he is a person of good moral character and generally fit for the trust to be reposed in him by issuance of the license applied for. The Board assured appellant that he would be given ample opportunity to present such evidence as he felt would so satisfy it (App. 14, 15).

Accompanied by his counsel appellant appeared before the Board at the appointed time and was accorded a hearing. Through counsel, appellant advised the Board that he had appeared for the purpose of showing to the satisfaction of the Board that he is a person of good moral character and generally fit for the trust to be in him reposed by the issuance of a license (Tr. 2). After appellant had stated his name and address a colloquy ensued respecting exclusion of witnesses from the hearing (Tr. 3), following which counsel for the petitioner objected to the

proceedings on the grounds that in 1944 and 1945 a number of indictments against holders of liquor licenses charging violation of the same section of the Internal Revenue Code had been nolle prossed and that in none of those cases was an inquiry of the character of the instant proceeding conducted (App. 32-38). The Board overruled the objection (App. 38). Thereupon counsel for appellant advised the Board that "* * * If it is the purpose to call witnesses to show the witness is not of good character I think he should be permitted to answer the charges rather than make a statement." Counsel for the Board thereupon proceeded with the evidence (Tr. 11), pertinent portions of which will be analyzed in the argument. Thereafter appellant testified in his own behalf, and twelve character witnesses testified that appellant bears an excellent reputation for being a person of good moral character. At the conclusion of the hearing a majority of the Board made findings of fact (App. 15-17) and concluded that "* * * the majority of the Board is unable to satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed", and that appellant's application for 1951 Retailer's Class "A" license is denied under Section 14 (a) 1, of the Alcoholic Beverage Control Act (App. 17). The third member of the Board dissented and filed a memorandum opinion setting forth his reasons (App. 17).

Appellant thereupon filed this action for mandatory injunction and/or mandamus, attacking the action of the Board as arbitrary, capricious, unreasonable, in violation of his constitutional rights of due process and equal treatment under the law, praying that the Board be enjoined from putting into effect its proposed order, and that a mandamus issue ordering the Board to issue a license to appellant (App. 2-8). With the consent of the Board, a temporary restraining order was issued, restraining the

Board from interfering with the continuous and active conduct by appellant of his business pending final determination of this case. The Board, through counsel, filed a motion to dismiss the complaint or for summary judgment, attaching thereto as an exhibit a transcript of proceedings before the Board in the matter of appellant. The motion came on for hearing before Judge James W. Morris, who, upon consideration of the points and authorities filed by the parties and after oral argument, granted the motion for summary judgment and continued in effect the temporary restraining order pending the action of this Court on appellant's application for a stay pending appeal. By its order dated June 6, 1952, this Court enjoined the Board, during the pendency of this appeal, from interfering with the continuous and active lawful conduct by appellant of his Retail Class "A" beverage business.

In his memorandum opinion on the motion for summary judgment, Judge Morris noted that there was substantial disagreement between appellant and witnesses who testified as to conspiracy and the sales in wholesale quantities; that such witnesses were, if they testified truthfully, accomplices and co-conspirators, and that it was accordingly proper that the testimony of such witnesses be viewed with caution and suspicion. "Nevertheless," Judge Morris held, "the transcript of the proceedings before the Alcoholic Beverage Control Board * * * discloses evidence upon which the Board could reasonably reach a conclusion that there was such a conspiracy and sales had been made pursuant thereto." Referring to appellant's contention that the Board's action was discriminatory in that the Board in numerous other instances had not revoked or refused to renew licenses of licensees who had been indicted for failure to make the entries and records required by Title 26, Section 2857(a) of the Internal Revenue Code and who had made compromises thereof, Judge Morris held (App. 29):

"Without passing upon the merits of such contention, it suffices that no showing has been made that any conspiracy, such as the Board found in the instant case, was present with respect to the instances mentioned. It is quite a different thing to fail to make a record entry or report and an agreement or conspiracy not to make such required entries, unless the persons to whom the sale which required the report or entry to be made is apprehended and arrested. That is what the testimony was with respect to this plaintiff, and that goes deeper when the fitness of that person for the trust to be reposed in him is the question to be decided."

From the judgment on the order granting summary judgment this appeal was taken.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States

"Amendment [XXI]."

"Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

"Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

"Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

"* * * Ratification was completed on December 5, 1933 * * *"

Constitution of the United States of America, Revised and Annotated, 1938,
p. 50.

Statutes

Alcoholic Beverage Control Act, approved January 24, 1934, 48 Stat. 319, as amended; Title 25, D. C. Code 1951.

“§25-102. [Sec. 2, ABC Act]

“This chapter may be cited as the ‘District of Columbia Alcoholic Beverage Control Act.’ It shall apply only to the District of Columbia and shall not authorize the delivery of alcoholic beverages outside of the District of Columbia in violation of the law of the place of delivery.”

“§ 25-111(e). [Sec. 11 (e), ABC Act]

“(e) *Retailer's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale. * * *

“§ 25-114. [Sec. 13, ABC Act, as amended]

“Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however,* That the holder of a manufacturer's or wholesaler's license or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad may store beverages, with the consent of the Board, upon premises other than premises designated in the license. Every annual license shall date from the 1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter pro-

vided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months."

"§ 25-115(a)1. [Sec. 14 (a) 1, ABC Act]

"(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

"1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed."

"§ 25-118. [Sec. 17, ABC Act, as amended]

"If during the period for which any license was issued the licensee shall be convicted of any felony, or if any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to

be used for any unlawful, disorderly, or immoral purpose, or knowingly employs in the sale or distribution of beverages any person who has, within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior thereto, been convicted of any felony, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioners in case of revocation or in case of suspension for a period of more than thirty days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Commissioners, as a part of the order of revocation provide that no license shall be granted for the same place for the period of one year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

"In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the Commissioners' regulations adopted under authority of this chapter."

"§ 25-121. [Sec. 20, ABC Act, as amended]

"Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person

under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages."

Internal Revenue Code, approved February 10, 1939, 53 Stat. Pt. 1, as amended, Title 26, U. S. C. A.,

"§ 2857. Books of rectifiers and wholesale dealers.

"(a) Requirements. Every rectifier and every wholesale liquor dealer who sells, or offers for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time shall keep daily, at his place of business covered by his special tax stamp, a record of distilled spirits received and disposed of by him, and shall render under oath correct transcripts and summaries of such records: *Provided*, That the Commissioner may in his discretion require such record to be kept at the place where the spirits are actually received and sent out. The records shall be kept and the transcripts shall be rendered in such form, and under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

"The records required to be kept under the provisions of this section and regulations issued pursuant thereto, shall be preserved for a period of four years, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by the Commissioner or any internal revenue officer.

"Every rectifier and wholesale liquor dealer who refuses or neglects to keep such records in the form prescribed by the Commissioner, with the approval of the Secretary, or to make entries therein, or cancels, alters, or obliterates any entry therein (except for the purpose of correcting errors) or destroys any part of such records, or any entry therein, or makes any false entry therein, or hinders or obstructs any internal revenue officer from inspecting such records or taking any abstracts therefrom, or neglects or refuses to preserve or produce such records as required by this chapter or by regulations issued pursuant thereto, shall pay a penalty of \$100 and, on conviction, shall be fined not less than \$100 nor more than \$5,000, and be imprisoned not less than three months nor more than three years.

"Every rectifier and wholesale liquor dealer who refuses or neglects to render transcripts or summaries in the form required by the Commissioner, with the approval of the Secretary, shall, upon conviction, be fined not more than \$100 for each such neglect or refusal."

53 Stat. 327, amended August 7, 1939, c. 561, 53 Stat. 1260.

"§ 3250. Tax

"(a) Wholesale dealers in liquors

"(1) In general. Wholesale dealers in liquors shall pay a special tax of \$100."

53 Stat. 388.

"§ 3254. Definitions

"(b) Wholesale dealer in liquors. Except as otherwise provided, every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time, shall be regarded as a wholesale dealer in liquors: *Provided*, That the Commissioner may, by regulations, with the approval of the Secretary, provide for the issuance of a stamp denoting pay-

ment of such special tax as a 'wholesale dealer in wines' or a 'wholesale dealer in wines and malt liquors' if, as the case may be, wines only, or wines and malt liquors only, are sold by a wholesale dealer in liquors."

53 Stat. 391.

SUMMARY OF ARGUMENT

Universal experience before and during Prohibition showed that the liquor business is a menace to the community unless rigorously controlled in the public interest. When Congress authorized the resumption of the liquor business in the District by enactment of the Alcoholic Beverage Control Act, it clearly expressed its intent that the liquor business in the District should be conducted on a high plane, by requiring the Board to be satisfied that applicants for licenses are persons of "good moral character." The record, considered as a whole, shows that appellant did not appreciate the significance of the phrase "good moral character" and did not comply with the standards established by the Act.

The absence of "good moral character" may be demonstrated by acts which do not amount to crime. Appellant's business conduct, as shown by the record, was far short of that of the average citizen of the community, and the Board was clearly right in refusing to be convinced by that record that appellant is a person of "good moral character."

Counsel for appellant conceded the admissibility and had no objection to the Board's admitting into evidence and considering evidence of appellant's compromise of criminal charges against appellant. Appellant's claim, being raised for the first time on appeal, should not be considered. In any event, the rule relating to offers of compromise does not apply to completed agreements of compromise, which may be received as admissions of liability.

Appellant's claim that the Board discriminated against him by singling him out for explanation of his compromise of criminal liability while not questioning other licensees on similar compromises is without merit. The record contains no facts respecting those other licensees. If the facts of those other cases are similar, the Board erred in not questioning the moral character of such licensees, but the Board is under no compulsion to perpetuate that error.

Appellant's claim that his right to cross examine witnesses was restricted overlooks the fact that while the Board did sustain an objection to a question of his counsel, the identical question was again propounded and answered. The feeling of the witness Lisk toward appellant was clearly stated and further cross examination on that subject could have produced nothing but repetitious statements.

ARGUMENT

Appellant's character and fitness for license as shown by the whole record.

Congress, authorizing the resumption of the liquor business in the District of Columbia¹ after adoption of the 21st Amendment to the Constitution, recognized that

"There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils."

Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620, 11 S. Ct. 13; *Richards v. Geiger*, 39 App. D. C. 278, 284.

¹ Alcoholic Beverage Control Act, approved January 24, 1934, 48 Stat. 319, Title 25, D. C. Code 1951.

The means adopted by Congress to "limit to the utmost" the evils of the liquor business in the District was to authorize the Alcoholic Beverage Control Board to issue a license only when it has first satisfied² itself that " * * * the applicant, if an individual * * * is of good moral character and generally fit for the trust to be in him reposed" by issuance of a license. Sec. 25-115, D. C. Code, 1951, (ante, p. 7).

A Retailer's Class "A" license, the type for which appellant applied, does not limit the holder thereof to the retail business exclusively. Section 11 (e) of the Alcoholic Beverage Control Act (ante, p. 6) authorizes such a licensee to sell only in closed containers, and does not authorize consumption of liquor on the premises where the sale is made. The licensee is authorized, however, to sell any quantity of liquor, without limitation, to any person except another licensee for resale. By paying the special tax of \$100 imposed on wholesale liquor dealers by Title 26, Sec. 3250, Internal Revenue Code (ante, p. 10), the Retailer Class "A" licensee can lawfully engage in the wholesale liquor business as that term is defined by Title 26, Sec. 3254, Internal Revenue Code (ante, p. 10) — a "person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors in quantities of five wine-gallons or more to the same person at the same time * * *". Every dealer who engages in the wholesale liquor business as thus defined is required by Sec. 2857 (a) of the Internal Revenue Code (ante, p. 9) so far as his wholesale business is concerned to

" * * * keep *daily*, at his place of business covered by his special tax stamp, a record of distilled spirits received and disposed of by him * * *",
(Emphasis supplied)

² Webster's New International Dictionary defines the word "satisfy" as "To free from doubt, suspense, or uncertainty; to give assurance to; to set at rest the mind of; to convince; as to *satisfy* oneself by inquiry; I am *satisfied* that he is guilty."

and to render "under oath" correct transcripts and summaries of such records to the Commissioner of Internal Revenue.

Section 2 of the Alcoholic Beverage Control Act (Sec. 25-102, D. C. Code, 1951, ante, p. 6) applies "only to the District of Columbia * * *". Section 20 of the Act (Sec. 25-121, D. C. Code 1951, ante, p. 8) prohibits licensees from selling alcoholic beverages to minors, intoxicated persons, persons of notoriously intemperate habits, and persons who appear to be intoxicated. The act does not specifically prohibit licensees from selling to known bootleggers. (App. 168).

Certain bootleggers who operated in North Carolina found it worthwhile to drive their cars or trucks from North Carolina to the District, purchase and load the trunks of their cars with 20, 30 or more cases of liquor, and make the return trip to North Carolina (App. 38-79). In addition to the occupational hazards of arrest, prosecution, and confiscation of the liquor and the vehicle (App. 63), the bootleggers became liable to payment of North Carolina taxes if the tax authorities examined the reports made by wholesale liquor dealers to the Commissioner of Internal Revenue and connected the bootleggers with sales reported by licensees (App. 49-51).

Appellant, having paid the \$100 special tax and qualified as a wholesale liquor dealer, sold liquor in wholesale quantities to known bootleggers operating in North Carolina (Appellant's Brief, p. 20).

According to the bootleggers who testified in the matter, their business with appellant was substantial and continuous. For example, Short testified that for eight or nine consecutive weeks he made weekly trips from North Carolina to appellant's place of business and purchased thirty-five or forty cases each trip (App. 72, 73). Lisk, Pridemore and Short testified that appellant supplied the services of his employee to transfer bottles from cases to other containers (App. 40, 55, 71) and Pridemore testified that ap-

pellant supplied shopping bags in which to store the bottles (App. 65). Lisk, Pridemore and Short testified that appellant agreed with them that he would not enter sales to them in his books unless they were apprehended by the police and called him on the telephone and advised him of that fact (App. 41, 55, 72). Short testified that appellant told him "to call him collect" (App. 72).

The picture drawn by appellant of his dealings with known bootleggers differs only in degree from that drawn by the bootleggers. According to appellant, in the course of several years he sold liquor in wholesale quantities to bootleggers in only a few instances (Appellant's Brief, p. 20). Appellant furnished the services of his employees to assist the bootleggers in transferring liquor bottles from cases to travelling bags (App. 107). Although Sec. 2857 (a) of the Internal Revenue Code (ante, p. 9) requires wholesale liquor dealers to keep "daily" records, appellant states that on one occasion the clerk who kept his records got "* * * behind a few days" (App. 96), and as a result, a sale made on the 21st of the month was entered after sales made on the 23rd. Appellant states in his brief (p. 21) that he "unequivocally denied the major portion of the bootleggers' testimony", but appellant did not unequivocally deny all of it. His counsel, referring to Short's testimony of weekly purchases averaging 40 cases, asked appellant "Did you make any such sales?" and appellant answered "Not that I recall." Appellant's books contained no record of sales to Short. (App. 98, 99).

In addition to appellant's and the bootleggers' testimony the Board had before it (App. 67, 68) the indictment charging appellant with violation of the Internal Revenue Code (App. A, p. 26) and the correspondence between appellant's earlier counsel and the United States Attorney respecting the offer and acceptance of appellant's offer of compromise (App. 89). It was to afford appellant an opportunity to

explain that compromise that the Board had initiated the proceeding. Appellant's explanation did not explain. Asked "Why did you pay one thousand dollars in settlement of this criminal prosecution?" appellant answered, "On advice of counsel" (App. 100). Appellant's present counsel read to the Board the letter of earlier counsel, submitting the offer of compromise in the following language (App. 89):

"The charges constitute a technical violation of the law and I submit are of a civil nature rather than criminal. Pursuant to the pertinent provisions of the Code I offer herewith \$1,000.00 as a civil payment in compromise of the criminal action, and request that the same be accepted in full satisfaction of the technical violation of the law and that the indictment be dismissed."

The "pertinent provisions of the Code" to which counsel for appellant apparently had reference is Title 26, Sec. 3761 of the Internal Revenue Code, which authorizes the Commissioner, with the approval of the Secretary, or of the Under Secretary, or of an Assistant Secretary of the Treasury to "compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense" and authorizes the Attorney General to compromise "any such case" after reference to the Department of Justice for prosecution or defense. No language contained in that section converts a criminal prosecution, by exercise of the authority to compromise it, into a civil action, and counsel's assertion that violations of law for each of which Congress has provided a maximum penalty of \$5,000 fine and three years' imprisonment are technical rather than actual was obviously an attempt to minimize the gravity of violations of law which the offer of compromise definitely did not deny were committed.

Appellant called as character witnesses twelve reputable citizens, each of whom testified that appellant enjoys an excellent reputation for being a person of good moral character.

In weighing the evidence, the question before the Board, and before the District Court, was not whether that evidence showed that appellant was guilty of crime. The question was and is, does all of that evidence require the conclusion that appellant is a person of good moral character?

The phrase "good moral character" has been construed by the courts most frequently in naturalization cases for the reason, as this Court said in *United States v. De Francis*, 60 App. D. C. 207, 50 F. 2d 497, 498,

"Admission to citizenship under the laws is not a right but a privilege, and, in order for an alien to avail himself of this privilege, he must comply with all the conditions imposed by the statute. Among those conditions is the requirement that he has resided in the United States for five years, 'and that during that time he has behaved as a man of good moral character.' This implies that qualification for citizenship imports good moral character in fact, as well as in behavior."

A liquor license, like admission to citizenship, is not a right but a privilege. And since all liquor licenses expire on the 31st day of January of each year, licensees, like applicants for naturalization, must behave as persons of good character if they would obtain successive licenses and continue in the liquor business.

It is not contended that the evidence before the Board proved beyond reasonable doubt that appellant violated a specific provision of the Alcoholic Beverage Control Act, but the absence of good moral character may be indicated

by conduct which does not amount to crime. As the District Court for the Northern District of California said in *In re Paoli*, 49 F. Supp. 128, 131, a naturalization case in which the Government moved to deny the petition on the ground of "lack of good moral character" predicated on petitioner's having entered a plea of guilty to a charge of violation of the California Alcoholic Beverage Control Act,

"A man need not have been convicted of a felony for the court to determine that he is not of good character. Citizenship was denied a petitioner for failure to support his infant children in Norway (*In re Nosen*, D. C., 49 F. 2d 817); and was denied in *Application of Polivka*, D. C., 30 F. Supp. 67, because petitioner's wife had obtained a divorce from him on the ground of cruel and barbarous treatment. Acts which would constitute only a misdemeanor may be sufficient to prevent the applicant from establishing good character, such as maintaining a disorderly hotel. *In re Kornstein*, D. C., 268 F. 172.

"In other words, while the conviction of a felony within the statutory period, standing alone, practically removes the discretion of the court to find the applicant of good moral character, the court has discretion to find he is not of good moral character by reason of acts or behavior for which he has never been arrested or prosecuted, if his conduct falls short of that of the 'average citizen of the community in which applicant resides.' "

The provisions for revocation or suspension of liquor licenses for violation of laws or regulations (Sec. 25-118, D. C. Code, 1951, ante, p. 7) shows clearly that Congress regards compliance with the laws of the District of Columbia as the primary rule of conduct for licensees. It requires no citation of authority for the proposition that Congress did not intend that licensees should use the privi-

leges granted them to aid in the violation of the laws of the nearby States. It was not necessary that Congress specifically prohibit such conduct to prevent licensees from so using their licenses. The requirement that licensees convince the Board of their good moral character, as the essential prerequisite for issuance of license, was sufficient to secure compliance with the spirit, as well as the letter, of the Alcoholic Beverage Control Act, and it was to achieve that effect that Congress used that language.

In *Federal Communications Commission v. WOKO, Inc.*, 329 U. S. 223, 67 S. Ct. 213, 91 L. ed. 204, the Commission refused to renew a license under an Act which provided that a station license might be revoked for false statements in the application. In affirming the action of the Commission, the Supreme Court held:

"It is said that in this case the Commission failed to find that the concealment was of material facts or had influenced the Commission in making any decision, or that it would have acted differently had it known that the Pickards were the beneficial owners of the stock. We think this is beside the point. The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones."

Considering the record as a whole, the majority of the Board concluded that appellant had failed to convince them that he is a person of good moral character, and the District Court held that that conclusion was supported by substantial evidence. To reverse that holding, it will be necessary, if this Court accepts as valid the criterion used by the District Court for the Northern District of California, *supra*, to hold that appellant's conduct, on his own testimony alone, is that of "the average citizen of

the community''. If appellant's attitude toward the law be the average, respect for the law in the District of Columbia has indeed fallen to a low estate.

Admission of evidence of compromise of the indictment.

The Board initiated the proceeding and conducted the hearing for the express purpose of obtaining from appellant an explanation of why he compromised the criminal charges against him (App. 14). When the indictment (App. A, p. 26) and records of the Department of Justice relating to the compromise were offered in evidence by counsel for the Board, counsel for appellant stated that he "conceded their admissibility" and "had no objection" to their introduction in evidence (App. 67, 68). Appellant's contention is thus subject to the established rule that questions raised for the first time on appeal will not be considered. In *Hormel v. Helvering*, 312 U. S. 552, 556, 61 S. Ct. 719, 85 L. ed. 1037, the Supreme Court said:

"* * * the basic reasons which support this general principle applicable to trial courts make it equally desirable that parties should have an opportunity to offer evidence on the general issues involved in the less formal proceedings before administrative agencies entrusted with the responsibility of fact finding."

See also *Cohen v. Cohen*, 47 App. D. C. 129, 133; *Eastman Kodak Co. v. District of Columbia*, 76 U. S. App. D. C. 339, 131 F. 2d 347 (footnote 4).

In any event, appellant's claim of error is without merit. The authorities cited in his brief state the general rule applicable to offers of compromise, whereas here is involved the admission into evidence of a completed agreement of compromise. The rule applicable to completed

agreements of compromise was stated in *Huntley v. Snider* (C. C. A. Mass.), 86 F. 2d 539, 540, as follows:

"The rule that offers of compromise will not be received as admissions of liability applies only between parties and has no application to a completed transaction as shown by the facts here presented. 2 Chamberlayne on Evidence, § 1442."

See also 31 C. J. S., Evidence, Sec. 290, and cases there cited.

Appellant's claim that the Board discriminated against him.

Appellant asserts (Brief, p. 27) that the Board justified its inquiry into appellant's character solely on the ground that it had received information that he had violated the "record-keeping provisions of Section 2857 (a) of the Internal Revenue Code, had been indicted for such violation, and had paid \$1,000 in compromise of that charge." Pointing to the fact that the record discloses that twelve other licensees had been indicted for similar violations and had likewise made payments in compromise, and that the Board had not initiated an inquiry respecting the moral character of those licensees, appellant claims that the Board has discriminated against him.

In *Federal Communications Commission v. WOKO, Inc.*, 329 U. S. 223, 227, *supra*, a similar contention was made. The Supreme Court rejected it, saying:

"Respondent complains that the present case constitutes a departure from the course which the Commission has taken in dealing with misstatements and applications in other cases. Much is made in argument of the fact that deceptions of this character have not been uncommon and it is claimed that they have not been dealt with so severely as in this case. *Cf. Navarro Broadcasting Association*, 8 F. C. C. 198. But the very fact that temporizing and compromising with deception

seemed not to discourage it, may have led the Commission to the drastic measures here taken to preserve the integrity of its own system of reports. The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable."

Further, as Judge Morris stated in his memorandum opinion, the record is silent as to the facts in the cases of the twelve licensees. The record does not show that any of those licensees supplied bootleggers, or aided bootleggers in the manner appellant admits that he did. It is conceded that if any of those twelve licensees conducted his liquor business with the same disregard for the spirit and intent of the Alcoholic Beverage Control Act that characterized appellant's business conduct, the Board was wrong in licensing or renewing the licenses of those dealers. But if the Board erred in that respect, that error does not entitle appellant to a license. As this Court said in the case of *Lanolin Plus Cosmetics v. Marzall*, — U. S. App. D. C. —, 196 F. 2d 591, 592, which appellant cites in his brief:

"But the fact that the Office has erred in those instances does not mean it should err in this one."

See also *Barnes v. District of Columbia*, 27 App. D. C. 101, 105.

Appellant's claim that the Board restricted his right of cross examination.

Appellant's assertion that his right to cross examine the bootleggers was unduly restricted is more apparent than real. In fact, the record on this score simply illustrates a

circumstance that occasionally is revealed on reading a transcript of testimony which for some reason escapes attention at the trial. It is true that counsel for the Board objected to a question asked by counsel for appellant on cross examination and the Board sustained the objection. Counsel for appellant thereupon propounded the identical question and without objection the witness answered it. (App. 51).

The bootlegger, Lisk, on cross examination testified:

"I am not up here for the money I am getting out of this; I don't care whether they pay me or not. I am up here because I got liquor charged to me that I didn't get. If it was not for that, I would not be here." (App. 48).

Further questioning by counsel for appellant and two Board members elicited the information that Lisk apparently had reference to the fact that he had been required to pay taxes on liquor which he claimed appellant had erroneously reported having sold to him. But so far as demonstrating bias on the part of the witness is concerned, any statement in addition to that quoted above is mere surplusage. Whether he was right or wrong in so believing, Lisk attributed some of his difficulties to appellant, and he so stated.

CONCLUSION

The whole tenor of the Alcoholic Beverage Control Act requires of licensees conduct on a high plane. A license is denominated by the Act as a trust. Licensees are engaged in a business which has been universally recognized as one which, unless carefully supervised, will endanger the community. By its action in this case the Board gave notice that it has adopted for the regulation of the liquor

business the criterion stated by this Court for naturalization in the *De Francis* case, *supra*, that the requirement that licensees be persons of good moral character

“* * * imports good moral character in fact, as well as in behavior.”

It is respectfully submitted that the judgment of the District Court upholding the action of the Board was right and should be affirmed.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

No. 1262-50 Criminal Action

UNITED STATES, *Plaintiff,*

vs.

HYMAN J. MINKOFF, LEON P. MINKOFF, *Defendants.*

I, HARRY M. HULL, *Clerk of THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*, do hereby certify the annexed to be a true and correct copy of the original docket entries, and indictment as (they) appear of record in the Clerk's Office of said Court in the above-entitled cause.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 28th day of December, 1950.

HARRY M. HULL, *Clerk*

(SEAL)

By C. J. RUMSEY, *Deputy Clerk.*

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Filed in Open Court Aug 14 1950 Harry M. Hull, Clerk

Holding a Criminal Term
July Term, 1950

Criminal No. 1262-50
Grand Jury No. Orig. 26 U.S.C. 2857a
(Failure to Keep Proper Records)

THE UNITED STATES OF AMERICA

v.

HYMAN J. MINKOFF, LEON P. MINKOFF

The Grand Jury charges:

1. On or about November 19, 1947, within the District of Columbia, Hyman J. Minkoff and Leon P. Minkoff were wholesale liquor dealers who were then and there selling and offering for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time at their place of business covered by their special tax stamp as wholesale liquor dealers at 1400 North Capitol Street.
2. On the same date referred to in the preceding paragraph of this count, within the District of Columbia, the defendants sold and disposed of about eighty-one and three-fifths wine-gallons of whiskey at one time to Leard Evander Lisk, Junior, at their said place of business covered by their special tax stamp as wholesale liquor dealers.
3. The defendants wilfully refused and neglected to make an entry of the said sale and disposal at their said place of business covered by their special tax stamp as wholesale liquor dealers in the daily record of distilled spirits dis-

posed of by them on the date referred to in the preceding paragraph, contrary to the provisions of Section 2857(a) of the Internal Revenue Code and the regulations pertaining thereto prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

SECOND COUNT:

1. On or about July 21, 1949, within the District of Columbia, Hyman J. Minkoff and Leon P. Minkoff were wholesale liquor dealers who were then and there selling and offering for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time at their place of business covered by their special tax stamp as wholesale liquor dealers at 1400 North Capitol Street.

2. On the date referred to in the preceding paragraph of this count, within the District of Columbia, the defendants, in the daily record of distilled spirits disposed of by them on July 21, 1949 at their place of business covered by their special tax stamp as wholesale liquor dealers, did falsely make an entry of a sale of seventy-four cases of whiskey to Evander Lisk, Jr., knowing the same to be false in that they had not sold the said whiskey, or any of it, to Evander Lisk, Junior.

THIRD COUNT:

1. On or about July 22, 1949, within the District of Columbia, Hyman J. Minkoff and Leon P. Minkoff were wholesale liquor dealers who were then and there selling and offering for sale, distilled spirits in quantities of five wine-gallons or more to the same person at the same time at their place of business covered by their special tax stamp as wholesale liquor dealers at 1400 North Capitol Street.

2. On the date referred to in the preceding paragraph of this count, within the District of Columbia, the defendants, in the daily record of distilled spirits disposed of by them

on July 22, 1949 at their place of business covered by their special tax stamp as wholesale liquor dealers, did falsely make an entry of a sale of one-hundred sixteen cases of whiskey to Evander Lisk, Jr., knowing the same to be false in that they had not sold the said whiskey, or any of it, to Evander Lisk, Junior.

*Attorney of the United States in
and for the District of Columbia.*

/s/ GEORGE MORRIS FAY

A TRUE BILL:

/s/ GEORGE F. ROSS
Foreman.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
CRIMINAL COURT

No.	PARTIES	CHARGE	ATTORNEYS
	UNITED STATES		For Prosecution
	vs.		
1262-50	Hyman J. Minkoff Leon P. Minkoff	Vio. Sec. 2857a, Title 26, U. S. Code.	For Defendants Charles E. Ford and H. Clifford Alder
DATE		PROCEEDINGS	
1950 Aug.	14	Presentment and indictment, filed (3 counts)	
	15	Each: ARRAIGNED, Plea NOT GUILTY, entered. Bond fixed by Court at \$500.00. Attorneys Charles E. Ford and H. Clifford Alder present, appearance entered and filed. KEECH, J.	
	15	Each: Recognizance \$500.00 taken with Wm. P. Ryan, surety, filed.	
Nov	7	Each: Government's oral motion for leave to dismiss granted. Dismissal entered. Defendant discharged. Attorney James Markham, Jr. present. TAMM, J.	

